HOBBS, NEW MEXICO

MUNICIPAL CODE

A Codification of the General Ordinances of Hobbs, New Mexico

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Municipal Code Corporation | P.O. Box 2235 Tallahassee, FL 32316
info@municode.com | 800.262.2633
www.municode.com

PREFACE

The Hobbs, New Mexico Municipal Code, originally published by Matthew Bender & Company, has been kept current by regular supplementation by Municipal Code Corporation, its successor in interest.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Matthew Bender & Company under the direction of David Hooten, emergency management and Jan Fletcher, city clerk.

The Code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the Title, chapter, and section. Thus, Section 2.12.040 is Section .040, located in Chapter 2.12 of Title 2. In most instances, sections are numbered by tens (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the Code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with the 2009 Republication, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance No. 1094, adopted April 18, 2016.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310 800-262-2633

HOW TO USE YOUR CODE

This code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with title, then chapter, and ending with section. Each part is represented in the code section number. For example, Section 2.04.010 is Section .010, in Chapter 2.04 of Title 2.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, code adoption and definitions. The titles in this code are separated by tabbed divider pages for quick reference. Some titles are Reserved for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, City Manager, can be added between 2.04, City Council, and Chapter 2.08, City Attorney.

Section.

Each section of the code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the code without renumbering.

Tables of Contents.

There are many tables of contents in this code to assist in locating specific information. At the beginning of the code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).)

Beginning with the 2009 Republication, a secondary ordinance history note will be appended to affected sections. Ordinance history notes will be amended with the most recent ordinance added to the end. These history notes can be cross referenced to the code comparative table and disposition list appearing at the back of the volume preceding the index.

Statutory References.

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a code is based on an earlier codification, the cross-reference table will help users find older or "prior" code references in the new code. The cross-reference table is located near the end of the code, under the tabbed divider "Tables." This table lists the prior code section in the column labeled "Prior Code Section" and the new code section in the column labeled "Herein."

Beginning with the 2009 Republication, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This very useful

table tells you the status of every ordinance reviewed for inclusion in the code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with the 2009 Republication, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with the 2009 Republication, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of this volume, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX
Fee 5.04.030
Required when 5.04.010

The index will be updated as necessary when the code text is amended.

Instruction Sheet.

Each supplement to the new code will be accompanied by an Instruction Sheet. This guide will tell the code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the code and the new pages that must be inserted. Following these instructions carefully will assure that the code is kept accurate and current. Removed pages should be kept for future reference.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. If you have a choice, we prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your code more quickly but also ensure that it is error-free. Our e-mail address is: ords@municode.com.

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

CITY COMMISSIONERS OF THE CITY OF HOBBS

1950

Ned C. Butler*—Mayor
W. R. Hollis
Earl E. Pennington
Ed Laughlin
Walter T. Linam**
J. T. Sayers

*Resigned October 2, 1950
**Appointed Nov. 20, 1950

1951

J. T. Sayers—Mayor
W. R. Hollis
Earl E. Pennington
Ed Laughlin
Walter T. Linam

1952

W. R. Hollis—Mayor
J. T. Sayers
Earl E. Pennington
Ed Laughlin
Walter T. Linam

1953

Earl E. Pennington—Mayor
Ed Laughlin
Walter T. Linam
W. R. Hollis
J. T. Sayers

1954

Walter T. Linam—Mayor
W. R. Hollis
J. T. Sayers
Earl E. Pennington
Ed Laughlin

1955

Ed Laughlin—Mayor
Walter T. Linam
W. R. Hollis
J. T. Sayers
Earl E. Pennington

1956

J. T. Sayers—Mayor
Mrs. A. A. Kemnitz
W. R. Hollis
Ed Laughlin
Walter T. Linam

1957

W. R. Hollis—Mayor
Mrs. A. A. Kemnitz
Ed Laughlin
Walter T. Linam
J. T. Sayers

1958

Mrs. A. A. Kemnitz—Mayor
Walter T. Linam
Ed Laughlin
W. R. Hollis
W. W. Yoakum

1959

Ed Laughlin—Mayor
Walter T. Linam
Mrs. A. A. Kemnitz
W. R. Hollis
W. W. Yoakum

1960

W. W. Yoakum—Mayor
Mrs. A. A. Kemnitz

W. R. Hollis
Walter T. Linam
Ed Laughlin

1961

Walter T. Linam—Mayor
Mrs. A. A. Kemnitz
Ed Laughlin
W. R. Hollis*
W. W. Yoakum
Randall F. Montgomery**

*Resigned May 6, 1961
**Appointed May 24, 1961

1962

Mrs. A. A. Kemnitz—Mayor
Ed Laughlin
Walter T. Linam
O. H. Gibbs
Randall F. Montgomery

1963

Ed Laughlin—Mayor
Walter T. Linam
Mrs. A. A. Kemnitz
O. H. Gibbs
Randall F. Montgomery

1964

Randall F. Montgomery—Mayor
O. H. Gibbs
Mrs. A. A. Kemnitz
Walter T. Linam
Burl Ray

1965

O. H. Gibbs—Mayor
Mrs. A. A. Kemnitz*

Walter T. Linam
Randall F. Montgomery
Burl Ray
Arvin D. Eady**

*Died December 10, 1965
**Appointed January 3, 1966

1966

Walter T. Linam—Mayor
Arvin D. Eady
Eugene F. Motter
Burl Ray
W. Bert Wayt

1967

Burl Ray—Mayor
Eugene F. Motter
W. Bert Wayt
Arvin D. Eady
Walter T. Linam
Leroy Wise**

**Appointed September 7, 1967

1968

Arvin D. Eady—Mayor
Burl Ray
W. Bert Wayt
Charles A. Robinson, Jr.
Jack Moody

1969

W. Bert Wayt—Mayor
Arvin D. Eady
Charles A. Robinson, Jr.
Burl Ray
Jack Moody

1970

Jack Moody—Mayor
William D. Rash
A. D. Eady
Burl Ray
Gary D. Reagan

1971

Jack Moody—Mayor
Gary D. Reagan
Burl Ray
A. D. Eady
William D. Rash

1972

Gary D. Reagan—Mayor
William D. Rash
Nolan H. Brunson
Max A. Clampitt
John J. Fletcher, Jr.

1973

William D. Rash—Mayor
Nolan H. Brunson
Max A. Clampitt
John J. Fletcher, Jr.
Gary D. Reagan

1974

Max A. Clampitt—Mayor
Nolan H. Brunson
John J. Fletcher, Jr.
Gary D. Reagan
Julio Mireles

1974 - 1975

Nolan H. Brunson—Mayor
John J. Fletcher, Jr.
Gary D. Reagan
Julio Mireles
Max A. Clampitt

1975 - 1976

John J. Fletcher, Jr.—Mayor
Gary D. Reagan
Julio Mireles
Max A. Clampitt
Nolan H. Brunson

March 1976 - February 1977

Julio Mireles—Mayor
John J. Fletcher, Jr.
Gary D. Reagan
Max A. Clampitt
Bill Waldrop

February 1977 - November 1977

Gary D. Reagan—Mayor
John J. Fletcher, Jr.
Julio Mireles
Max A. Clampitt
Bill Waldrop

November 1977 - March 1978

Max A. Clampitt—Mayor
Bill Waldrop
John J. Fletcher, Jr.
Gary D. Reagan
Julio Mireles

March 1978 - August 1978

Max A. Clampitt—Mayor
John J. Fletcher, Jr.
V. H. Westbrook
Michael T. Collins
Bill Waldrop

August 1978 - June 1979

Bill Waldrop—Mayor
John J. Fletcher, Jr.

Michael T. Collins
V. H. Westbrook
Max A. Clampitt

June 1979 - March 1980

John J. Fletcher, Jr.—Mayor
Michael T. Collins
V. H. Westbrook
Max A. Clampitt
Bill Waldrop

March 1980 - December 1980

Michael T. Collins—Mayor
V. H. Westbrook
Max A. Clampitt
Bill Waldrop
John J. Fletcher, Jr.

December 1980 - September 1981

V. H. Westbrook—Mayor
Max A. Clampitt
Bill Waldrop
John J. Fletcher, Jr.
Michael T. Collins

September 1981 - June 1982

Max A. Clampitt—Mayor
Bill Waldrop
John J. Fletcher, Jr.
Roy J. Showalter
V. H. Westbrook

June 1982 - March 1983

Bill Waldrop—Mayor
John J. Fletcher, Jr.
Roy J. Showalter
V. H. Westbrook
Max A. Clampitt

March 1983 - December 1983

John J. Fletcher, Jr.—Mayor
V. H. Westbrook
Roy J. Showalter
Max A. Clampitt
Bill Waldrop

December 1983 - March 1984

V. H. Westbrook—Mayor
Roy J. Showalter
John J. Fletcher, Jr.
Max A. Clampitt
Bill Waldrop

March 1984 - August 1984

V. H. Westbrook—Mayor
Roy J. Showalter
John J. Fletcher, Jr.
Max A. Clampitt
JoAnn Martin

September 1984 - June 1985

Roy J. Showalter—Mayor
Max A. Clampitt
John J. Fletcher, Jr.
JoAnn Martin
V. H. Westbrook*

*Resigned December 17, 1984

July 1985 - March 1986

Max A. Clampitt—Mayor
JoAnn Martin
Roy J. Showalter
John J. Fletcher, Jr.
Vernon H. Smith*

*Appointed September 3, 1985

March 1986 - December 1986

JoAnn Martin—Mayor
Vernon H. Smith

Joe P. Loving
Zeak L. Williams, Jr.
Max A. Clampitt

December 1986 - September 1987

Vernon H. Smith—Mayor
Joe P. Loving
Zeak L. Williams, Jr.
Max A. Clampitt
JoAnn Martin

September 1987 - June 1988

Joe P. Loving—Mayor
Zeak L. Williams, Jr.
Max A. Clampitt
JoAnn Martin
Vernon H. Smith

June 1988 - March 1989

Zeak L. Williams, Jr.—Mayor
Max A. Clampitt
JoAnn Martin
Vernon H. Smith
Joe P. Loving

March 1989 - December 1989

Max A. Clampitt—Mayor
JoAnn Martin
Vernon H. Smith
Joe P. Loving
Zeak L. Williams, Jr.

December 1989 - March 1990

JoAnn Martin—Mayor
Vernon H. Smith
Joe P. Loving*
Zeak L. Williams, Jr.
Max A. Clampitt

*Resigned March, 1990

March 1990 - December 1990

Vernon H. Smith—Mayor
Zeak L. Williams, Jr.
Max A. Clampitt
Robert L. Love
Randell L. Owensby*

*Appointed April, 1990

December 1990

Zeak L. Williams, Jr.—Mayor
Max A. Clampitt
Robert L. Love
Randell L. Owensby
Vernon H. Smith

September 1991

Max A. Clampitt—Mayor
Robert L. Love
Randell L. Owensby
Zeak L. Williams, Jr.
Vernon H. Smith

April 1992

Robert L. Love—Mayor
Randell L. Owensby
Zeak L. Williams, Jr.
Vernon H. Smith
Donald E. Bratton

December 1993

Robert L. Love—Mayor
Randell L. Owensby
Zeak L. Williams, Jr.
Vernon H. Smith
Donald E. Bratton

March 1994

Randell L. Owensby—Mayor
Patricia D. Jones

Joseph D. Calderon
Jimmy E. Woodfin
Donald E. Bratton

March 1996

Donald E. Bratton—Mayor
Patricia D. Jones
Joseph D. Calderon
Jimmy E. Woodfin
James E. Murphy

March 1998

Joseph D. Calderón-Mayor
Donald E. Bratton
Joy Knott*
Jimmy E. Woodfin
James E. Murphy
Al Perry**

*Deceased-November 28, 1998
**Appointed-January 7, 1999

March 2000

Jimmy E. Woodfin-Mayor
Gary W. Fonay
Mark E. Bawcum
Hector M. Ramirez
Joseph D. Calderón

Charter Adopted August 1, 2000
Effective April 1, 2001

Robert P. Wallach-Mayor
(elected at large per Charter)

March 2002

Robert P. Wallach-Mayor
Gary W. Fonay
Mark E. Bawcum
Hector M. Ramirez
Joseph D. Calderón
Monty D. Newman
John W. Boyd

March 2004

Monty D. Newman—Mayor
Gary W. Fonay
Ray J. Betzen***
Mark E. Bawcum****
Hector M. Ramirez
Joseph D. Calderon
Monty D. Newman*
Robert R. Wallach**
John W. Boyd

*Resigned as Commissioner - March 4, 2004
**Appointed - April 3, 2004
***Resigned - October 17, 2005
****Appointed - November 3, 2005

March 2006

Monty D. Newman—Mayor
Gary W. Fonay
Albert Hernandez
Hector M. Ramirez
Joseph D. Calderon
Robert R. Wallach
John W. Boyd

March 2008

Gary Don Reagan—Mayor

Hal Brunson
Jonathan Sena
Carl A. Mackey
Joseph D. Calderon
Robert R. Wallach
John W. Boyd

March 2010

Gary Don Reagan—Mayor
Hal Brunson
Jonathan Sena
Carl A. Mackey*
Crystal Mullins**
Joseph D. Calderon
Garry A. Buie
John W. Boyd

*Deceased - December 27, 2010
**Appointed - January 5, 2011

March 2012

Sam D. Cobb—Mayor
Marshall Newman
Jonathan Sena
Crystal Mullins
Joseph D. Calderon
Garry A. Buie
John W. Boyd

March 2013

Sam D. Cobb—Mayor
Marshall Newman
Jonathan Sena
Crystal Mullins
Joseph D. Calderon
Garry A. Buie

John W. Boyd

March 2015

Sam D. Cobb—Mayor
Marshall Newman
Jonathan Sena
Crystal Mullins
Joseph D. Calderon
Garry A. Buie
John W. Boyd

March 2016

Sam D. Cobb—Mayor
Marshall Newman
Jonathan Sena
Patricia Taylor
Joseph D. Calderon
Garry A. Buie
Don R. Gerth

CITY MANAGERS

Leslie R. King Acting City Manager January, 1950 to August 10, 1950

John H. Bender City Manager August, 1950 to December, 1952

Neal Harr City Manager March, 1953 to October, 1965

Fred Baker City Manager October, 1965 to October, 1969

Heston Gildon City Manager October, 1969 to May, 1971

Joseph K. Harvey City Manager May, 1971 to July, 1983

Kenneth E. Martin City Manager July, 1983 to December, 1986

Robert M. Gallagher City Manager January, 1987 to March, 1994

Everett (Bo) Thomas, III City Manager March, 1994 to June, 2002

Debi Lee Acting City Manager June, 2002 to February, 2003

Daniel R. Dible City Manager February, 2003 to October, 2007

Eric L. Honeyfield City Manager October, 2007 to June, 2012

Manuel Gomez City Manager July, 2012 to September, 2012

J. J. Murphy City Manager September, 2012

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Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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SUPPLEMENT HISTORY TABLE

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

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

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1034	7- 6-2010	Include	2
1035	8-16-2010	Omit	2
1036	9-20-2010	Include	2
1037	10- 4-2010	Include	2
1038	1- 3-2011	Include	2
1039	2-28-2011	Include	2
1040	2-28-2011	Include	2
1041	3- 7-2011	Include	2
1042	4- 4-2011	Include	2
1043	4- 4-2011	Include	2
942	12-20-2005	Include	3
1044	4- 4-2011	Omit	3
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5762(Res.)	12- 5-2011	Include	3
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1053	4-16-2012	Include	3

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1056	11- 5-2012	Include	4
1057	12- 3-2012	Include	4
1058	1- 7-2013	Include	4
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1061	2-19-2013	Omit	4
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1064	3-18-2013	Include	4
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1067	7- 1-2013	Include	4
1068	9- 3-2013	Omit	5
1069	9- 3-2013	Omit	5
1070	11-18-2013	Omit	5
1071	12- 2-2013	Include	5
1071-A	4- 7-2014	Omit	5
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1073	7- 7-2014	Omit	5
1074	7- 7-2014	Include	5
1075	7- 7-2014	Include	5
1076	7- 7-2014	Include	5
6182(Res.)	8-18-2014	Omit	5
1077	10- 6-2014	Include	5
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1080	11-17-2014	Include	5
6229(Res.)	12-12-2014	Include	5
1082	4- 6-2015	Include	6
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1093	4- 4-2016	Include	6
1094	4-18-2016	Include	6

CITY OF HOBBS

CHARTER

Adopted by the Voters of the
City of Hobbs, New Mexico,
at a Special Election
Held on August 1, 2000
Effective April 1, 2001

Charter for the City of Hobbs*

Section 1 Powers

1-1. Powers.

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***Editor's note—**Ordinance history: Amended by Ord. 878 dated April 16, 2001; Charter amended in its entirety at election of Mar. 2, 2010.

7-2. Saving Clause.

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8-1. Compensation.

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Section 10 Recall

10-1. Recall.

We, the citizens of the City of Hobbs, New Mexico, under the Constitution and law of New Mexico, do ordain and establish this government for the City of Hobbs, New Mexico.

Section 1 Powers

1-1. Powers.

The municipality, now existing and known as the City of Hobbs, is a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or this Charter. The City may exercise its legislative power in the manner it deems necessary or the City may act in the manner provided by law ("state statute"). The purpose of this Charter is to provide for maximum local self-government. A liberal construction shall be given to the powers of the City. (Amd. of 3-2-2010)

Section 2 Electorate

2-1. Electors.

A. Candidates. Any registered qualified elector of the City of Hobbs may be a candidate for the office of Mayor, Municipal Judge, or Commissioner for the district in which the elector resides, if that candidate has resided within the City limits of Hobbs and, if applicable, within the appropriate Commission district for a period of at least 180 days prior to the filing of that elector's declaration of candidacy.

B. Voting Eligibility. Any registered qualified elector of the City of Hobbs is eligible to vote in any City election.

C. Voter Photo Identification. Voter photo identification shall be required for all municipal elections as follows:

1. When a voter approaches the election polling place seeking to vote, the voter must identify herself or himself audibly by name. The Municipal Election Clerk shall locate the registered voter's name as spoken and ask the individual seeking to vote for one current identification card containing the voter's name and photograph.

2. Such photo identification card may include any card issued by a government agency, driver's license, student identification card, commercial transaction card (such as a credit or debit card), insurance card, union card, a profes-

sional association card or a voter identification card issued by the Hobbs City Clerk, provided the item submitted contains a photograph depiction of the voter.

3. If the individual is unable to provide a photo identification card, she or he shall be allowed to vote on a conditional ballot, but only if she or he swears or affirms under penalty of perjury in an affidavit provided by the City Clerk that she or he is the registered voter listed on the voter registration rolls at the precinct at which she or he presented herself or himself to vote and provides her or his date of birth and the last four digits of her or his Social Security number.

4. Conditional ballots shall be issued for no other reason than the failure to present photo identification. Conditional ballots shall be counted only by the Canvassing Board and only on the voter's presentation to the City Clerk, by 9:00 a.m. on the third day following the election, one of the photo identification cards described in this section. The Canvassing Board shall also verify that the voter who cast the conditional ballot was registered to vote for the election and did not vote elsewhere in the same election. If a voter who cast a conditional ballot under this section swears or affirms under penalty of perjury in an affidavit provided by the City Clerk within the three-day canvassing period that she or he has a religious objection to being photographed, such voter shall not be required to submit photo identification. The Canvassing Board shall otherwise verify that the conditional ballot was valid.

5. The City Clerk shall develop and provide instructions for election judges concerning the requirements of this section and a method of complaint and resolution for individuals who feel they have been discriminated against by election officials or the City Clerk's administration of this section.

6. Regarding the requirements of this section, knowingly executing a false statement constitutes perjury as provided in Section 30-25-1 NMSA 1978 and voting on the basis of a falsely executed statement constitutes false voting as provided in Sections 1-20-8, 1-20-8.1 and 3-8-75 NMSA 1978.

7. Voter photo identification cards shall be issued by the City Clerk without charge to any voter who presents any two (2) of the following identification documents that show the name and address of the voter: a state-issued identification card, Social Security card, student identification card, library card, insurance card, selective service card, union card, professional association card, utility bill, bank statement, government check or a paycheck,

upon confirmation with the County Clerk that such person is registered to vote. If the individual is unable to present any two (2) of these documents to the City Clerk, then the voter shall swear or affirm in writing under penalty of perjury that she or he is the registered voter and shall be issued a voter photo identification card upon confirmation with the County Clerk that such person is registered to vote. The City Clerk issued photo identification card shall state on its face that it shall not be valid for identification other than for the purpose of voting in City of Hobbs municipal elections and shall not be valid if the voter is subsequently purged from the voter rolls.

8. This section shall take precedence over the State Municipal Election Code and any reference in this article to the State Municipal Election Code. The provisions of this section shall apply only to City of Hobbs municipal elections.

9. Changes to procedural matters only, as set forth in Paragraph C herein, shall be adopted by Ordinance by the City Commission.

(Amd. of 3-2-2010; Res. No. 6229, 12-12-2014)

Editor's note—Res. No. 6229, adopted Dec. 12, 2014, confirmed the certificate of canvass of the special municipal election held on Dec. 9, 2014, regarding the Charter amendment proposed in Res. No. 6182, Prop. No. 3, adopted Aug. 18, 2014, requiring voter photo identification for all municipal elections.

2-2. Regular City Election.

Regular City elections for the purpose of electing City officers and considering any other question placed on the ballot by the Commission shall be held on the first Tuesday in March of each even-numbered year.

(Amd. of 3-2-2010)

2-3. Non-Partisan Elections.

The names of candidates for City office shall be listed on the ballot without party or other designation. The name of the candidate shall appear on the ballot as it is shown on the candidate's declaration of candidacy. The listing of the names on the ballot of the candidates for the office to be filled shall be determined by lot.

(Amd. of 3-2-2010)

2-4. Elective Offices.

The elective offices of the City are six (6) Commissioners, a Mayor, and a Municipal Judge.

(Amd. of 3-2-2010)

2-5. Term of Office.

The term of office of a Commissioner and Mayor is four (4) years. The term of office for the Municipal Judge is four (4) years. The Municipal Judge in office at the time of adoption of this Charter shall continue to serve until the regular municipal election in 2002.
(Amd. of 3-2-2010)

2-6. Runoff Elections.

A. If no candidate receives at least forty percent (40%) of the votes cast for a particular office, a runoff election shall be held within forty-five (45) days after certification of the results of the election. The two (2) qualified candidates who receive the highest number of votes cast for the office shall automatically become the candidates in a runoff election without filing a declaration of candidacy.

B. The Commission shall, by resolution, fix the day of the runoff election and specify the offices to be filled and the names of the candidates therefor. The resolution shall be published once, at least seven (7) days before the runoff election date. No other publications are required in connection with runoff elections. Eligibility to vote in a runoff election shall be the same as in the original election for the particular office and only such voting precincts and procedures will be reactivated as are necessary to accommodate any runoff race.
(Amd. of 3-2-2010)

Section 3 Form of Government

The form of government of the City of Hobbs is the Commissioner/Manager form of government with an elected Mayor having limited duties.
(Amd. of 3-2-2010)

Section 4 City Commission

4-1. Composition.

The City Commission consists of six (6) members who shall be elected as provided in this Charter. One (1) Commissioner shall be elected from each district. Each district shall be compact and contiguous and composed of populations as nearly equal as practicable. Communities of interest, including those based on economic, geographic or ethnic characteristics shall be preserved within a single district to the extent reasonable and practical. Any member of the Commission representing a district shall be a resident of, and elected by, the registered qualified electors of that district.
(Amd. of 3-2-2010)

4-2. At-Large Election - Mayor.

The mayor shall be voted on at-large.
(Amd. of 3-2-2010)

4-3. District Elections.

The City of Hobbs shall be divided into six (6) districts after receipt of the official Year 2000 Federal Census, but until the regular municipal election in 2002, the City shall have only five (5) districts as now existing, and the Commissioners now occupying these positions shall remain in office after the effective date of this Charter until their successors are elected as provided for in this Charter. The sixth Commissioner shall be elected for the first time in the regular municipal election in 2002. In addition, at that same regular municipal election in 2002, a Commissioner shall be elected for a full four (4) year term or a two (2) year term, as applicable, if such redistricting results in a district having two (2) incumbent Commissioners or no incumbent Commissioner residing therein. Commencing with the regular municipal election in 2002, the Municipal Judge and Commissioners for districts 4, 5, and 6

shall be elected for full 4-year terms. Commencing with the regular municipal election in 2004, the Mayor and Commissioners for districts 1, 2, and 3 shall be elected for full 4-year terms.
(Amd. of 3-2-2010)

4-4. Staggered Terms.

The terms of the Commissioners shall be staggered so that three (3) Commissioners are elected every two (2) years.
(Amd. of 3-2-2010)

4-5. Vacancy.

A vacancy in the office of Commissioner, Mayor, or Municipal Judge occurs upon the officer's death, disability, resignation or termination of residency in the City or the district represented. If the office is vacated, the remaining members of the Commission shall appoint a registered qualified elector to fill the vacancy within thirty (30) days of the vacancy. Any registered qualified elector appointed to fill a vacancy shall serve until the next regular City election, at which time a registered qualified elector shall be elected to fill the remaining unexpired term, if any.
(Amd. of 3-2-2010)

4-6. Meetings.

The Commission shall meet at least twice each month. Meetings of the Commission shall be open to the public and the official records of the City shall be open to inspection during regular business hours as provided in State statute.
(Amd. of 3-2-2010)

4-7. Powers and Duties.

The Commission is the governing body of the City of Hobbs and may exercise all legislative powers not expressly denied by general law.

The Commission shall:

A. Pass all ordinances and other measures conducive to the health, safety and welfare of the City;

B. Carry out the provisions of this Charter;

C. Perform all acts required for the general welfare of the City;

D. Create all offices and departments necessary for proper carrying on of the work of the City; and

E. Appoint a City Manager and hold him responsible for the proper and efficient administration of City government.

(Amd. of 3-2-2010)

Section 5 Mayor

5-1. Organizational Meeting - Mayor Pro-Tem - Selection.

At its organizational meeting to be held on the first Monday following the regular City election or as soon thereafter as practical, the Commission shall elect one (1) of its members to serve as Mayor Pro-Tem. The term of office of Mayor Pro-Tem is until the next organizational meeting of the Commission, or until a successor is selected and qualified, unless sooner removed by death, resignation or removal from office.

(Amd. of 3-2-2010)

5-2. Mayor - Duties.

The Mayor:

A. Shall preside at all meetings of the Commission and perform other duties, consistent with his/her office, as imposed by the Commission;

B. Has the same right to vote as a Commissioner;

C. Has the right to place any item on a Commission meeting agenda;

D. Shall lead, guide and develop (in conjunction with the City Commission and others) short and long range plans and goals for the City concerning its growth and development (economic, industrial and otherwise);

E. Shall represent the City and promote its interests at the local, county, state and national levels and in economic and industrial development activities;

F. Is the official head of the City for all ceremonial and spokesperson purposes;

G. In the event of an emergency or natural disaster, with a support of a majority of the City Commission, call upon or request relief or aid from any local, county, state or national governmental entity.

The Mayor shall be elected for the first time in a special election to be held at least ten (10) days before the effective date of this Charter and shall serve until the regular municipal election in 2004.

The terms of Commissioners shall be unaffected and continue in the manner provided by state statute.
(Amd. of 3-2-2010)

Section 6 Manager

6-1. Qualifications - Appointment.

A City Manager shall be appointed solely on the basis of his administrative qualifications for an indefinite term. His selection shall not be limited by reason of his former residence.

His salary shall be fixed by the City Commission. A vacancy in the office of the City Manager occurs upon his death, resignation or removal from office.
(Amd. of 3-2-2010)

6-2. Manager - Duties.

The City Manager is the Chief Executive Officer of the City. He shall have a seat, but not vote, at every meeting of the City Commission. The City Manager shall:

A. Enforce and carry out all ordinances, rules and regulations adopted by the Commission;

B. Employ, discipline and discharge employees of the City;

C. Prepare and submit an annual budget to the City Commission;

D. Make recommendations to the City Commission concerning the welfare of the City;

E. Be the person, or his designated agent, for the purposes of civil process;

F. Continue to be the administrative officer of the City in the event of any local, county, state or national emergency or disaster.

(Amd. of 3-2-2010)

Section 7 Charter Review

7-1. Charter - Amendments - Revision.

This Charter may be amended or repealed in the manner provided by law. The City Commission shall appoint a Charter Commission at least every ten (10) years to review the Charter. The Charter Commission shall consist of two (2) Commissioners, the Mayor, and one (1) member appointed by each Commissioner. After conducting at least one (1) public hearing to obtain public opinion and input, the Charter Commission shall submit recommendations to the City Commission. The City Commission shall act on the recommendations of the Committee by an affirmative vote of the majority.
(Amd. of 3-2-2010)

7-2. Saving Clause.

This Charter does not apply to pending litigation. All ordinances, resolutions, regulations and orders shall continue in effect until amended or repealed.
(Amd. of 3-2-2010)

Section 8 Compensation

8-1. Compensation.

Compensation for the Mayor, Mayor Pro-Tem, and Commissioners shall be determined by Ordinance and until at least the election in March, 2004, shall be as follows:

A. Mayor: $18,000.00 per year.

B. Mayor Pro-Tem: $ 4,800.00 per year.

C. Commissioner: $ 4,800.00 per year.
(Amd. of 3-2-2010)

Section 9 Effective Date

This Charter shall become effective at 12:01 a.m. on April 1, 2001.
(Amd. of 3-2-2010)

Section 10 Recall

10-1. Recall.

A. The Mayor and any City Commissioner are subject to a recall election. Upon petition seeking the recall of the Mayor and/or any City Commissioner, the Commission shall call a special election unless the regular municipal election occurs within sixty (60) days, in which case the qualified electors shall vote on the recall at the regular election.

B. In either case, there shall be a special ballot containing the name of the officer, the office he holds and the dates of the beginning and termination of his official term. Below the name of the officer shall be two (2) phrases:

"For the recall" and

"Against the recall,"

one (1) below the other with a space after each for placing a cross where desired. If a majority of the votes cast favor recall and this majority equals or exceeds the number of votes the officer received when elected, the office shall be declared vacant, and the office shall be filled as are other vacancies.

C. For the Mayor, the petition must be signed by no less than ten percent (10%) of the total number of registered qualified electors in the municipality at the last regular municipal election.

D. For a City Commissioner elected from a district, the petition shall be signed by no less than ten percent (10%) of the total number of registered qualified electors in that Commissioner's district at the last regular municipal election. The special recall election shall be held only in that district.

E. If the Mayor or Commissioner is recalled, he or she shall not be eligible for re-election until the term for which he or she was originally elected has expired.

F. If the recall election results in a failure to secure the votes necessary to recall, the Mayor or City Commissioner who is the subject of the election shall not be subject again to recall until six (6) months have elapsed from the date the previous recall election was held.
(Amd. of 3-2-2010)

CHARTER COMPARATIVE TABLE

This is a chronological listing of the Charter ordinances and amendments of Hobbs, New Mexico beginning with the 2009 Republication, included in this Code.

Ordinance Number	Date Passed at Election	Section	Section this Charter
Amend. of	3- 2-2010	Dltd	Secs. 1—9
		Added	Secs. 1—10
6229(Res.)	12-12-2014		Sec. 2-1

Title 1

GENERAL PROVISIONS

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1.01.010 Adoption.
1.01.020 Title—Citation—Reference.
1.01.030 Reference applies to all amendments.
1.01.040 Title, chapter and section headings.
1.01.050 Reference to specific ordinances.
1.01.060 Ordinances passed prior to adoption of the code.
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1.12.050 Detoxification of intoxicated persons—Transportation of intoxicated person by police officer or public service officer.
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1.12.070 Detoxification of intoxicated persons—Notification of family.
1.12.080 Detoxification of intoxicated persons—Liability for costs of transportation, shelter or treatment.

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1.16.010 Maximum penalty.
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1.16.030 Disposition and use of fees collected.
1.16.060 Person convicted of motor vehicle operation while intoxicated—Fee assessment.
1.16.070 Person convicted of possession of a controlled substance—Fee assessment.
1.16.080 Transmittal of certain fees to the administrative office of the courts.

Chapter 1.01 CODE ADOPTION

1.01.010 Adoption.

There is hereby adopted the "Hobbs Municipal Code," as compiled, edited and published by Book Publishing Company, Seattle, Washington. (Ord. 901 § 1, 2002)

1.01.020 Title—Citation—Reference.

This code shall be known as the "Hobbs Municipal Code" and it shall be sufficient to refer to said code as the "Hobbs Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the "Hobbs Municipal Code." References may be made to the titles, chapters, sections and subsection of the "Hobbs Municipal Code" and such references shall apply to those titles, chapters, sections or subsections as they appear in the Code. (Ord. 901 § 2, 2002)

1.01.030 Reference applies to all amendments.

Whenever a reference is made to this Code as the "Hobbs Municipal Code" or to any portion thereof, or to any ordinance of the City of Hobbs, New Mexico, codified herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 901 § 3, 2002)

1.01.040 Title, chapter and section headings.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 901 § 4, 2002)

1.01.050 Reference to specific ordinances.

The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code. (Ord. 901 § 5, 2002)

1.01.060 Ordinances passed prior to adoption of the code.

The last ordinance included in this code was Ordinance 885, passed August 6, 2001. The following ordinances, passed subsequent to Ordinance 885, but prior to adoption of this code, are hereby adopted and made a part of this code: Ordinances 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, and 897. (Ord. 901 § 6, 2002)

1.01.070 Effect of code on past actions and obligations.

The adoption of this code does not affect prosecutions for ordinance violations committed prior to the effective date of this code, does not waive any fee or penalty due and unpaid on the effective date of this code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance. (Ord. 901 § 7, 2002)

1.01.080 Constitutionality.

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. (Ord. 901 § 8, 2002)

1.01.090 References to prior code.

References in City forms, documents and regulations to the chapters and sections of the former City code shall be construed to apply to the corresponding provisions contained within this code. (Ord. 901 § 9, 2002)

1.01.100 Copies.

Copies of the Hobbs Municipal Code may be purchased from the Hobbs City Clerk at a cost of fifty dollars ($50.00) per copy. (Ord. 901 § 10, 2002)

Chapter 1.04 GENERAL PROVISIONS

1.04.010 How code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "The Hobbs Municipal Code of the City of Hobbs, New Mexico," and may be so cited. Such ordinances may also be cited as "Hobbs Municipal Code." (Prior code § 1-1)

1.04.020 Definitions and rules of construction.

In the construction of this code and of all ordinances, the following rules and definitions shall be observed, unless such would be inconsistent with the manifest intent of the City Commission:

"City" or "the City" means the City of Hobbs, in the County of Lea and State of New Mexico, except as otherwise provided.

"City Commission" shall be construed to mean the City Commission of the City of Hobbs.

"Computation of time." Unless otherwise specifically provided, in computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday.

"County" or "this county" shall refer to Lea County, New Mexico.

"Gender." Words importing the masculine gender shall include the feminine and neuter.

"Keeper" and "proprietor" mean and include persons, firms, associations, corporations, clubs and co-partnerships, whether acting by themselves or as a servant, agent or employee.

"Land" and "real estate" include rights and easements of incorporeal nature.

"Misdemeanor" shall be construed to mean and to stand in lieu of "violation of ordinance."

"Month" means a calendar month.

"Number." Words used in the singular include the plural, and the plural includes the singular number.

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

"Owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety or person holding a community interest, of the whole or a part of such building or land.

"Person" shall include a corporation, company, partnership, association or society, as well as a natural person.

"Personal property" includes money, goods, chattels, things in action and evidence of debt.

"Preceding" and "following" mean next before and next after, respectively.

"Property" shall include real, personal and mixed estates and interests.

"Public place" shall include any park, cemetery, school yard or open space adjacent thereto and any lake or stream.

"Real property" shall include lands, tenements and hereditaments.

"Sidewalk" means any portion of a street between the curb line, or the lateral lines of a roadway where there is no curb, and the adjacent property line, intended for the use of pedestrians.

"Signature or subscription" includes a mark when the person cannot write, his or her name being written near such mark, and witnessed by a person who writes his or her own name as witness.

"State" or "this State" shall be construed to mean the State of New Mexico.

"Street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the City, and means the entire width thereof between abutting property lines; it shall be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the City Commission.

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

"Written" and "in writing" may include printing, engraving or any other mode of representing words and letters, excepting those cases where the manual signature or mark of any person is required.

"Year" means a calendar year. (Prior code § 1-2)

1.04.030 Provisions considered as continuations of existing ordinances.

The provisions appearing in this code, so far as they are in substance the same as those of the 1975 code and all ordinances adopted subsequent to the 1975 code and included herein, shall be considered as continuations thereof and not as new enactments. (Editorially amended during 2002 codification; prior code § 1-3)

1.04.040 Catchlines of sections.

The catchlines of the several sections of this code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (Prior code § 1-4)

1.04.050 Severability of parts of code.

It is declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code. (Prior code § 1-5)

Chapter 1.08 CITY DISTRICTS DESIGNATED

1.08.010 City districts.

The City shall be divided into six (6) districts having boundaries as follows:

A. District 1. District 1 consists of those portions of voting precincts numbered 24, 25, 29, 32, 33 and a portion of Precinct 28 lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Sanger Street and Turner Street, thence north along the centerline of Turner Street to Bender Boulevard; thence east along the centerline of Bender Boulevard to Grimes Street; thence north along the centerline of Grimes Street to Cochiti Avenue; thence east along the centerline of Cochiti Avenue to Rojo Drive; thence south along the centerline of Rojo Drive to Copper Avenue; thence east along the centerline of Copper Avenue to Fowler Street; thence north along the centerline of Fowler Street to Navajo Drive; thence east along the centerline of Navajo Drive to Dal Paso Street; thence south along the centerline of Dal Paso Street to Sanger Street; thence west along the centerline of Sanger Street to Turner Street; being the point of beginning.

B. District 2. District 2 consists of those portions of voting precincts numbered 41, 42, 43, 44 lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Sanger Street and Dal Paso Street, thence north along the centerline of Dal Paso Street to Navajo Drive; thence east along the centerline of Navajo Drive to the west section line of Section 24, Township 18 South, Range 38 East; thence north along the west section line of Section 24, Township 18 South, Range 38 East to north City limits of Hobbs.

Also, beginning at the intersection of Sanger Street and Dal Paso Street, thence east along the centerline of Sanger Street to Jefferson Street; thence south along the centerline of Jefferson Street to Scharbauer Street; thence east along the centerline of Scharbauer Street to Stadium Drive; thence north along the centerline of Stadium Drive to Sanger Street; thence east along the centerline of Sanger Street to the east City limits of Hobbs.

C. District 3. District 3 consists of all of those portions of voting precincts numbered 52, 53, and a portion of 35 and 51 lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Sanger Street and Dal Paso Street, thence west along the centerline of Sanger Street to Selman Street; thence south along the centerline of Selman Street to Snyder Street; thence west along the centerline of Snyder Street to Houston Street; thence south along the centerline of Houston Street to Broadway Street; thence east along the centerline of Broadway Street to Dal Paso Street; thence south along the centerline of Dal Paso Street to Texas Street; thence west along the centerline of Texas Street to Houston Street; thence south along the centerline of Houston Street to the south City limits of Hobbs.

Also, beginning at the intersection of Dal Paso Street and Sanger Street, thence east along the centerline of Sanger Street to Jefferson Street; thence south along the centerline of Jefferson Street to Scharbauer Street; thence east along the centerline of Scharbauer Street to Stadium Drive; thence north along the centerline of Stadium Drive to Sanger Street; thence east along the centerline of Sanger Street to the east City limits of Hobbs.

D. District 4. District 4 consists of those portions of voting precincts numbered 36, 54, 55, 62, and a portion 35 and 51, lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Sanger Street and Turner Street, thence south along the centerline of Turner Street to Marland Street; thence west along the centerline of Marland Street to west City limits of Hobbs.

Also, beginning at the intersection of Sanger Street and Turner Street, thence east along the centerline of Sanger Street to Selman Street; thence south along the centerline of Selman Street to Snyder Street; thence west along the centerline of Snyder Street to Houston Street; thence south along the centerline of Houston Street to Broadway Street; thence east along the centerline of Broadway Street to Dal Paso Street; thence south along the centerline of Dal Paso Street to Texas Street; thence west along the centerline of Texas Street to Houston Street; thence south along the centerline of Houston Street to the south City limits of Hobbs.

E. District 5. District 5 consists of those portions of voting precincts numbered 20, 22, 23, 27, 30, and a portion of 28 lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Bender Boulevard and Grimes Streets, thence west along the centerline of Bender Boulevard to Lovington Hwy(Turner Street); thence continue north along the centerline of Lovington Hwy to West County Road; thence southwest along the centerline of West County Road to the west City limits of Hobbs.

Also, beginning at the intersection of Bender Boulevard and Grimes Street, thence north along the centerline of Grimes Street to Cochiti Avenue; thence east along the centerline of Cochiti Avenue to Rojo Drive; thence south along the centerline of Rojo Drive to the centerline of Copper Avenue; thence east along the centerline of Copper Avenue to the centerline of Fowler Street; thence north along the centerline of Fowler Street to the centerline of Navajo Drive; thence east along the centerline of Navajo Drive to the west section line of Section 24, Township 18 South, Range 38 East; thence north along the west section line of Section 24, Township 18 South, Range 38 East to north City limits of Hobbs.

F. District 6. District 6 consists of those portions of voting precincts numbered 31, 34, 61, a portion of 35 lying within the City limits and being more particularly described as follows:

Beginning at the intersection of Sanger Street and Turner Street, thence south along the centerline of Turner Street to Marland Street; thence west along the centerline of Marland to the west City limits of Hobbs.

Also, beginning at the intersection of Sanger Street and Turner Street, thence north along the centerline of Turner Street to the intersection of Bender Boule-

vard and Lovington Hwy(Turner Street); thence continue north along the centerline of Lovington Hwy to West County Road; thence southwest along the centerline of West County Road to the west City limits of Hobbs.

All as set forth on the map of the City on file in the office of the City Clerk. Within one (1) year after publication of each United States Census, the City Commission shall review the districting of the City and shall either reaffirm by ordinance that the City is divided into six (6) districts that meet the requirements stated below or, in the event that population shifts have made such reaffirmation impossible, the Commission shall appoint a committee of no less than seven (7) persons to review and adjust the districting in order to insure that ethnicity/language minority groups, compactness, contiguity, substantial equality in population, community interests, and other criteria set out in the Voting Rights Act and court decisions are maintained in each single member district, and written recommendations shall be made to the Commission within sixty (60) days of the appointment of said committee. Any adjustment in district lines shall be approved by City ordinance; provided, however, that this review shall not occur more than once every ten (10) years in keeping with the current census practice even if the census should be taken more frequently in the future. (Ord. 889, 2001: prior code § 1-6)
(Ord. No. 1046, 6-20-2011)

Chapter 1.12 ARREST AND CITATION PROCEDURE

1.12.010 Duty of police officers to make arrests or issue citations—Summonses—Environmental citations—Other citations.

A. In cases in which warrants are not required under State law, it shall be the duty of every police officer to arrest or to issue a misdemeanor citation to any person committing a misdemeanor in his or her presence, or, if not committed in his or her physical presence, it shall be his or her duty to arrest or to issue a misdemeanor citation if the circumstances are such as to reasonably show a commission of misdemeanor. If the alleged offender refuses to sign the citation agreeing to appear at the day and time specified in the citation, he or she shall be arrested.

B. It shall be the duty of every police officer to arrest any persons for whom a warrant has been issued for such arrest.

C. In cases where a person knowing or believing that a misdemeanor has been committed shall file a written complaint under oath in the municipal court: (1) the Municipal Judge may thereupon issue a warrant for the arrest of the alleged offender; or (2) the Municipal Judge may thereupon issue a summons. If a warrant is issued, it shall be the duty of every police officer to arrest such alleged offender. If a summons is issued it shall be the duty of every police officer to serve such summons upon such alleged offender or, in the discretion of the Municipal Judge, the summons may be mailed to the alleged offender.

D. In cases involving designated offenses as set forth in the environmental citation, the City environmental officers, police officers or Park and Recreation Department officers may issue a citation requiring the offender to appear before the Municipal Judge in the municipal court at the time designated by the citation without the posting of bond; provided, that the offender signs the citation agreeing to appear at the day and time specified in the citation. The citation shall be in the form and shall contain the offenses specified from time to time by the City Commission.

E. Any citation used as a notice to appear is a valid complaint, though not verified, in the event the person receiving it voluntarily appears in court.

F. It is unlawful for any person to violate a summons or his or her written promise to appear in court, given to a police officer or sanitation officer or park and recreation officer upon issuance of a citation, regardless of the disposition of the charge for which the summons or citation was issued. A written promise to appear in court may be complied with by appearance of counsel. (Prior code § 9-2)

1.12.020 Message from prisoners.

Any person, after having been arrested, shall be entitled to send a message to his family, friends or attorney; and it shall be the duty of each police officer to deliver, or cause to be delivered, any such message upon request by the prisoner. (Prior code § 9-3)

1.12.030 Designation of offenses by number of code section.

In all prosecutions under the provisions of this code or any section thereof, it shall be lawful to describe the number and section of this code that has been violated in the issuance of any citation, summons or complaint for the arrest of any person violating the provisions of any part or section thereof. (Prior code § 9-4)

1.12.040 Detoxification of intoxicated persons—Definitions.

As used in Sections 1.12.050 to 1.12.090:

"Health care facility" means a health care facility in the City in which the intoxicated person is apprehended, which normally provides services to intoxicated persons who are not already its patients.

"Intoxicated person" means any natural person who is apparently so intoxicated in a public place that he or she has become disorderly or has become unable to care for his or her own safety.

"Public service officer" means a person appointed by the Chief of Police to assist police officers in the transportation of an intoxicated person under such sections. (Prior code § 19-30)

1.12.050 Detoxification of intoxicated persons—Transportation of intoxicated person by police officer or public service officer.

A. A police officer or public service officer may transport an intoxicated person to his or her residence, when it appears to the police officer or public service officer that the intoxicated person will thereby become orderly and able to care for his or her own safety.

B. A police officer or public service officer may transport an intoxicated person to the nearest health care facility within the City, when it appears to the police officer or public service officer that the intoxicated person is unable to care for his or her own safety or in need of medical attention.

C. A police officer or public service officer may transport to the City jail an intoxicated person who has become disorderly, when it appears that the intoxicated person:

1. Has no residence in the city in which he or she is apprehended; or

2. Is unable to care for his own safety; or

3. Constitutes a danger to others if not transported to the jail. (Prior code § 19-31)

1.12.060 Detoxification of intoxicated persons—Search by police officer or public service officer—Liability of officers for assault or false imprisonment.

A police officer or public service officer may, if he or she reasonably believes it necessary for his or her own safety, make a protective search of an intoxicated

person before transporting him or her to a residence, health care facility or jail. No police officer or public service officer, shall be held criminally or civilly liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the authority of Sections 1.12.040 to 1.12.090, if such measures were, in fact, reasonable and did not involve use of excessive or unnecessary force. (Prior code § 19-32)

1.12.070 Detoxification of intoxicated persons—Notification of family.

Whenever an intoxicated person is transported by a police officer or public service officer to a health care facility or jail, the person in charge of that facility or jail at the time shall see that a responsible member of the intoxicated person's family is notified of his or her presence there as soon as practicable. (Prior code § 19-33)

1.12.080 Detoxification of intoxicated persons—Liability for costs of transportation, shelter or treatment.

Any intoxicated person having transportation, shelter or treatment furnished to him or her as an intoxicated person under Sections 1.12.040 to 1.12.090 shall be liable to the City or health care facility for its reasonable costs in providing such transportation, shelter and treatment. (Prior code § 19-34)

1.12.090 Detoxification of intoxicated persons—Limitations concerning protective custody—Record of protective custody.

A. An intoxicated person held in protective custody under Sections 1.12.040 to 1.12.090 shall be held in protective custody until the alcohol concentration in the person's blood or breath is less than five-one-hundredths, except as otherwise provided. Under no circumstances may an intoxicated person be held in a jail for a period of more than twenty-four (24) hours from the time of his or her arrival at the jail.

B. An intoxicated person held in protective custody under Sections 1.12.040 to 1.12.090 may be held for a period exceeding twenty-four (24) hours, but for not more than seventy-two (72) hours, only upon certification by a licensed physician, physician's assistant or a registered nurse, functioning directly under standards established by a licensed physician, that such extended protective custody is in the best medical interests of the person. Any such extended protective custody under this subsection shall only be in a detoxification facility or regional alcoholism treatment center.

C. An intoxicated person held in protective custody at a jail or transported to a health care facility under Sections 1.12.040 to 1.12.090 shall not be considered to have been arrested or charged with any crime.

D. A police officer or public service officer shall record the date, time and place of the protective custody of an intoxicated person. The record of protective custody shall not be considered as an arrest or criminal record.

E. For purposes of this section, the determination of alcohol concentration shall be based on the grams of alcohol in one hundred (100) milliliters of blood or the grams of alcohol in two hundred ten (210) liters of breath. (Ord. 869 § 3 (part), 2001: prior code § 19-35)

1.12.100 Payment of penalty assessment.

A. At the time of making an arrest for any penalty assessment misdemeanor as set forth in Section 66-8-116 of the New Mexico Statutes Annotated, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice and payment of the prescribed penalty assessment is a complete satisfaction of the violation.

B. Payment of the penalty assessment may be made by mail or in person to the Clerk of the Municipal Court within five (5) days of the date of the arrest. Payments of penalty assessments are timely if postmarked within five (5) days from the date of arrest. Payment can be made in the form of cashier's check, money order or personal check. The municipal court shall issue a receipt when a penalty assessment is paid.

C. No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

D. If a penalty assessment is not paid within five (5) days from the date of arrest, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued. Upon conviction in such prosecutions, the court shall impose penalties as provided by the Motor Vehicle Code. (Prior code § 16-14.1)

Chapter 1.16 GENERAL PENALTY*

1.16.010 Maximum penalty.

Unless a lesser maximum penalty or a specific penalty is established by ordinance for a particular offense, the maximum penalty for violation of any municipal ordinance shall be as follows:

A. Except for those violations of ordinances described in subsections B and C of this section, a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than ninety (90) days or both;

B. For violations of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than nine hundred and ninety-nine dollars ($999.00) or imprisonment for not more than one hundred seventy-nine (179) days or both;

C. For violations of an industrial user wastewater pretreatment ordinance as required by the United States Environmental Protection Agency, a fine of not more than nine hundred ninety-nine dollars ($999.00) a day for each violation;

D. Notwithstanding any other provisions of this chapter or State law, where a defendant is charged with more than one (1) offense rising out of a single transaction, act or occurrence, the maximum combined sentence of imprisonment that may be imposed for all such offenses shall not be greater than one hundred seventy-nine (179) days. (Ord. 938 (part), 2005)

1.16.020 Mandatory fees collected upon conviction.

In addition to any fine or imprisonment described in Section 1.16.010 of this chapter, there is imposed upon any person convicted of violating any municipal ordinance the penalty for which carries a potential imposition of a term of imprisonment or any ordinance relating to the operation of a motor vehicle the following mandatory fees:

A. A correction fee of twenty dollars ($20.00);

B. A judicial education fee of three dollars ($3.00); and

C. A court automation fee of six dollars ($6.00).

***Editor's note—**Prior history: Prior code §§ 9-1—9-1.2 and 16-14.2 as amended by Ords. 819, 847, 890 and 908.

As used in this section, "convicted" means the defendant has been found guilty of a criminal charge by the Municipal Judge, either after trial, a plea of guilty or a plea of nolo contendere, or has elected to pay a penalty assessment in lieu of trial. (Ord. 938 (part), 2005)
(Ord. No. 1015, 8-17-2009)

1.16.030 Disposition and use of fees collected.

A. All corrections fees collected shall be deposited in a special corrections fund in the municipal treasury and shall be used only for municipal jailer or juvenile detention training for the construction planning, construction, operation and maintenance of a municipal jail or juvenile detention facility; for paying the cost of housing municipal prisoners or juveniles in other detention facilities in the State, for complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities, for providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing, for defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities, or for providing electronic monitoring systems. Interest from fees deposited in the special collections fund may be credited to the City's general fund.

B. All judicial education fees collected shall be remitted monthly to the State Treasurer for credit to the judicial education fund and shall be used for the education and training, including production of benchbooks and other written materials, of Municipal Judges and other Municipal Court personnel.

C. All court automation fees shall be remitted monthly to the State Treasurer for credit to the Municipal Court automation fund. (Ord. 938 (part), 2005)

1.16.060 Person convicted of motor vehicle operation while intoxicated—Fee assessment.

A person convicted of a violation of Section 66-8-102 of the New Mexico Statutes Annotated, 1978 Compilation, previously adopted as part of the City Motor Vehicle Code, shall be assessed, in addition to any other fee or fine:

A. A fee of eighty-five dollars ($85.00) to defray the costs of chemical and other tests utilized to determine the influence of liquor or drugs; and

B. A fee of seventy-five dollars ($75.00) to fund comprehensive community programs for the prevention of driving while under the influence of intoxicat-

ing liquor or drugs and for other traffic safety purposes. (Ord. 938 (part), 2005)
(Ord. No. 1033, 6-21-2010)

1.16.070 Person convicted of possession of a controlled substance—Fee assessment.

A person convicted of a violation of Section 9.28.020 of the Hobbs Municipal Code, shall be assessed, in addition to any other fee or fine, a fee of seventy-five dollars ($75.00) to defray the costs of chemical and other analyses of controlled substances. (Ord. 938 (part), 2005)

1.16.080 Transmittal of certain fees to the administrative office of the courts.

All fees collected pursuant to Sections 1.16.060 and 1.16.070 of this chapter shall be transmitted to the administrative office of the courts for credit to the Crime Laboratory Fund, to be expended as provided by Section 31-12-9 of the New Mexico Statutes Annotated, 1978 Compilation. (Ord. 938 (part), 2005)

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Chapter 2.04 CITY COMMISSION AND MAYOR RULES*

2.04.010 Election.

A. Single-Member Districts. Each member of the City Commission, which consists of five (5) commissioners, shall reside in and be elected from a single-member district.

B. Equality of Commissioners. All commissioners shall have equal voting power, privileges and prerogatives.

C. Eligibility. Any registered qualified elector of the City may vote in any City election and shall be eligible to hold elective office in the City. Commission candidates for district offices shall have resided within the district they seek to represent for a period of not less than one hundred eighty (180) days immediately prior to the date of filing for such office.

D. Term of Office. The term of office for City Commissioners is four (4) years. The terms of the City Commissioners shall be staggered so that two (2) commissioners shall be elected at one (1) regular City election and the remaining three (3) commissioners shall be elected at the following regular City election. This section notwithstanding anything to the contrary as set forth in subsection E of this section.

E. Transition. At the regular municipal election following the enactment of this section, all five (5) City Commissioners shall be elected; of the five (5) commissioners elected, two (2) shall serve until the following regular City election, and the remaining three (3) shall serve until the next regular City election thereafter. The existing City Commission will determine by lot which district commissioners are to serve for the shorter term and which are to serve the longer term immediately following the call for election to elect new City officers. (Prior code § 2-4)

2.04.020 Regular meetings.

The members of the City Commission shall meet at the commission chambers in the City hall on the first and third Monday of each month at 6:00 p.m., and such meetings shall be deemed the regular meetings of the governing body of the City. (Ord. 820, 1994: prior code § 2-5)

***Editor's note—**The title of Ch. 2.04 was amended by Ord. 978.

2.04.030 Special meetings.

Special meeting may be called by the Mayor and any two (2) members of the commission, or by any three (3) members of the commission at any time, by written notice to all members of the City Commission, when business affairs of the City require the attention of the commission. In the event a special meeting is called by either the Mayor or any three (3) members of the City Commission, twenty-four (24) hours' written notice must be given to the members of the commission of the calling of such special meeting; provided, that such twenty-four (24) hours' notice may be waived in writing by the members of the commission. (Prior code § 2-6)

2.04.060 Rules of procedure—Other matters.

Article I General Provisions

A. Meetings.

1. The Commission consists of the Mayor elected from the City at large and six (6) Commissioners elected from the Commissioner-Districts created by ordinance and reviewed every ten (10) years.
2. Meetings of the Commissioners shall be held in compliance with the Open Meetings Act, Section 10-15-1 et seq. N.M.S.A. 1978.
3. Notice of all meetings shall be in accordance with the annual City Open Meetings Resolution.

B. Work Sessions—Public Notice Required.

1. Work sessions may be held for the purpose of examining issues, but no official action may be taken. Such sessions must be advertised, open to the public, and minutes taken. Public input will be allowed at the discretion of the presiding officer.

C. Preparation and Distribution of Agendas.

1. The City Clerk, through the City Manager, shall prepare the agenda for all Commission meetings.
    a. The City Clerk shall assure that scheduled public hearings and meetings have been duly advertised.
2. All material to be presented to the Commission shall be submitted to the City Clerk not later than noon five (5) days prior to the meeting date to allow for compilation and distribution of Commission packets.

3. Requests for initiation of legislation or placement of items on the agenda shall be directed through the City Manager. The Mayor or any three (3) members of the Commission may include items for the agenda. City staff is available to assist the member in the preparation and presentation of the issue.

D. Minutes.

1. Minutes shall include the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions showing how each member voted.

2. Verbatim transcription of Commission proceedings will be prepared only by majority vote on a per-meeting basis.

E. Reconvened Meetings.

1. The Commission may recess and reconvene a meeting to a subsequent date, provided that prior to recessing, the presiding officer specifies the date, time and place for continuation, and immediately posts notice of the date, time, and place for the reconvened meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Duties of the Presiding Officer.

1. Mayor Responsibilities.

   a. The Mayor is the presiding officer of all meetings of the City Commission, both regular and special. The Mayor shall preserve order and decorum and have general direction of the Commission Chambers.

   b. Announce the business before the body in the order in which it is to be acted upon.

   c. Recognize the speakers entitled to the floor and guide and direct the proceedings of the body.

   d. Call for public input on agenda items.

   e. Decide all points of order, subject to appeal, unless he or she prefers to submit the point to the decision of the Commission.

   f. Put to vote all questions which are regularly moved or otherwise arise in the course of the proceedings; the Mayor has the same right to vote and participate as a Commissioner.

g. In accordance with the Municipal Charter, the Commission shall elect from its membership at its first meeting following the regular municipal election a standing Mayor Pro Tempore who, in the absence of the Mayor, upon the Mayor's inability to act, or upon the request of the Mayor, shall preside and shall have all the powers and authority of the Mayor.

h. In the absence of the Mayor or the Mayor Pro Tem, a temporary presiding officer may be appointed from the remaining Commissioners, who shall serve and act with full authority and power of the Mayor for and during the tenure of the meeting for which he or she is appointed.

2. Adopted Rules.

a. Any matter not covered by these rules shall be governed by decision of the presiding officer.

b. Suspension of Rules. Except for charter, statutory, or ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a majority vote of Commissioners present. When the suspension of a rule is requested, and no objection is offered, the presiding officer shall announce the rule suspended, and the Commission may proceed accordingly.

3. Supplemental Legal Opinions.

a. The Mayor or any two (2) City Commissioners may request a second legal opinion by having the request placed on the agenda, stating the basis for disagreement with the opinion.

b. If approved, the lawyer or law firm will be selected by the Commission. The Commission will also approve or reject City payment of the costs of the supplemental legal opinion.

This provision does not prevent the Mayor or any Commissioner from retaining from his/her private funds, an attorney to render additional opinions.

G. Commission Responsibilities.

1. In all public statements, Commissioners shall clarify the message as their individual position unless otherwise authorized by the Commission.

2. Insure that the Mayor is informed, as soon as practical, of significant communications with outside entities, whether or not directed to or initiated by the Commission.

3. Refrain from negotiating contracts on behalf of the City. Only the City Manager or his or her designee can negotiate a contract on behalf of the City.
4. Resignations submitted by the elected Commissioners, or appointed City board members, may not be rescinded once submitted and need not be formally accepted by the Commission.
5. The duties and powers of all appointed board members shall be advisory only unless expressly stated otherwise by ordinance and shall expire with the end of the appointed term, after which time the position will be considered vacant until filled.
6. All members of the City Commission shall be required to attend all meetings regular or special, unless their absence is caused by good and sufficient reasons, and it shall be within the power of the Commission to determine whether or not reasons for absence of a member of the Commission shall be deemed "good and sufficient."

H. Code of Conduct. The Mayor and Commission shall:

1. Place Commission goals ahead of individual goals;
2. Not use the position for personal gain or advantage to friends;
3. Not disclose confidential information;
4. Not exercise authority as a governing body member, except when acting in a meeting with the full Commission, unless formally delegated by the Commission;
5. Not interfere in personnel matters, union negotiations, nor discuss pending legal issues/litigation with adverse parties and their attorneys in any legal action involving the City, unless formally delegated by the Commission.

Article II Meeting Procedures

A. Order of Business.

1. The order of business shall be conducted as follows, provided that the presiding officer may rearrange items to conduct business more efficiently:
   a. Call to Order and Roll Call;
   b. Invocation and Pledge of Allegiance;
   c. Approval of Minutes;

d. Proclamation and Awards of Merit;

e. Public Comments (Regarding Non-Agenda Items);

f. Consent Agenda. (To be used only for routine, ministerial items when the agenda is lengthy.) The consent agenda is approved by a single motion. Any member of the Commission may request an item to be transferred to the regular agenda from the consent agenda without discussion or vote;

g. Discussion;

h. Action Items (Ordinances, Resolutions, Public Hearings);

i. Comments by City Commissioners, City Manager;

j. Adjournment—Motion, Second, Vote.

B. Rules of Order.

1. Debate. Debate is the essential feature of a legislative body. It is the means by which the opinions of members are exchanged, questions deliberated and conclusions reached on the business before the body.

a. To Permit Debate. There must be a debatable question before the body, and one (1) member must have been recognized as entitled to speak.

b. Time Limits. The presiding officer may set time limits in debate, including a time limit on members and public input.

c. Call the Question (Previous Question). Debate may be closed by calling the question. If there is no objection, the presiding officer shall immediately call the question; otherwise a second and subsequent vote is needed to close debate. A call for the question is not debatable.

2. Voting.

a. Each member in attendance must vote for or against all measures before the body unless there is a stated and disclosed conflict of interest, for which abstention is allowed.

b. Except for "show of hands" procedural matters, so declared by the presiding officer, voting shall be by simultaneous electronic voting equipment. For audio recording purposes, the presiding officer will announce the voting results at the end of each vote. Each member's vote shall be recorded in the minutes. In the event of an equipment malfunction, voting shall be by roll call. Roll call votes shall be at random, but the presiding officer shall vote last.

3. Decorum.

   a. All remarks shall be addressed through the presiding officer.

   b. Members shall confine their remarks to the question under discussion or debate, avoiding personal references or attacks on fellow members, staff members or members of the public. No member of the governing body shall engage in private discourse or commit any other act tending to distract the attention of the governing body from the business before it.

   c. A member of the governing body or public who resorts to persistent irrelevance or persistent repetition may be directed to discontinue his or her speech by the presiding officer.

   d. Point of Order. A member may call attention to the violation of the rules or a mistake in procedure by claiming a point of order. The presiding officer may permit a full explanation before ruling on the claim and may submit the question to the governing body for decision by a majority vote. The presiding officer is not required to decide any point of order not directly presented in the proceedings of the body.

   e. Question of Privilege. Questions of privilege do not relate to pending business but concern special matters of immediate and overriding importance which should be allowed to interrupt the consideration of any other matter. The presiding officer makes all rulings as to whether a request for privilege is granted.

C. Actions of the Commission.

1. Ordinances. An ordinance has the effect of law within the municipality and ranks highest in authority of all actions.

   a. A proposed ordinance is open to diminimous amendment on final reading.

   b. Substantive amendments offered at adoption shall require adoption to be postponed to a subsequent meeting and re-publication of the proposed ordinance.

2. Resolutions. A resolution is an internal legislative act which is a formal statement of policy concerning matters of special or temporary character.

   a. Action shall be taken by resolution when required by law and in those instances where a formal expression of policy is desired.

b. Resolutions shall remain in effect until rescinded or replaced by a subsequent resolution on the same subject.

3. Approvals. Approvals are the class of non-policy action in which the Commission shall make the final determination upon the recommendation of the Mayor or the City Manager. Those items allowing for such approval by the Commission shall include, but not be limited to:

a. Mayor's communications recommending appointments to boards and commissions;

b. City Manager communications recommending approval of contracts, sealed bids and administrative or departmental requests.

D. Motions.

1. Presentation of Motions.

a. A main motion presents an ordinance, resolution, or other proposition for the passage, adoption, approval, or rejection. The question is usually stated in the positive form, e.g., "to pass," "to adopt," "to approve," "to confirm," "to concur".

A main motion must be seconded before a vote can take place and only one (1) main motion may be on the floor at a time. In the absence of a second, the motion fails. Main motions are debatable and amendable, and can be tabled and reconsidered after adoption.

2. Withdrawal and Modification of Motions. Until a motion is seconded and stated, the mover may withdraw or modify the motion without consent. When a motion is seconded, and stated, it is in the control of the governing body and can therefore be withdrawn or modified only by consent of the body.

E. Amendments.

1. Every amendment proposed must be relevant to the subject of the proposition.

2. A proposed amendment is made as a motion and takes precedence over the original motion out of which it arises and must be seconded and voted upon before the original motion.

3. After an amendment is adopted, the question, as amended, must be put to a vote.

F. Reconsideration of Action. Reconsideration of a negative vote on final action is as proper as reconsideration of a favorable vote. The motion to reconsider may be made at the same meeting or a subsequent meeting. However, certain rules apply as appropriate under the circumstances.

1. The motion must be made by a member who voted with the prevailing side.
2. The motion to reconsider is inappropriate after the action taken has gone into effect or after it is too late to reverse the action taken.
3. Should the motion for reconsideration pass, the item is immediately before the governing body to be acted upon or scheduled for hearing at a subsequent meeting, if necessary, for required public notice purposes.
4. Should the motion for reconsideration fail, the item remains as adopted.

Article III Public Hearings

A. Public Hearing Procedures/Liquor Licenses, Land Use Decisions, Appeals Allowed by State Law and Other Quasi-Judicial Proceedings.

1. Reasonable efforts shall be made to give notice of public hearings to all interested people. Notice of public hearings shall state the subject, the time and place of the public hearing, the manner in which interested people may express their views and where interested people may obtain copies of the material that is the subject of the hearing.
2. At the beginning of the public hearing, the presiding officer may require that all interested persons, who have an immediate, pecuniary or direct interest that will be substantially and specifically affected by the proceeding, and witnesses sponsored by such interested persons, wishing to address the Commission register with the City Clerk, giving their names and addresses, and whether they wish to speak as a proponent, opponent, or otherwise. Commissioners shall refrain from any ex-parte communication with such persons described above. Any person who fails to register shall not be permitted to speak until all those who signed in have spoken.
3. The presiding officer may set time limits and may change the order of speakers so that testimony is heard in the most logical groupings, e.g., proponents, opponents, adjacent owners, vested interests, etc.

4. Interested persons shall have the opportunity to submit data, views or arguments orally or in writing. All written material must be marked as exhibits, submitted to the City Clerk, and placed into evidence as part of the administrative record.

5. Comments from the general public on legal or policy matters raised by the proceeding may be received before the close of the public hearing. (Ord. 978 (part), 2008: prior code § 2-9)

2.04.070 Quorum—Validation of ordinances or resolutions by Mayor.

A quorum of the City Commission shall constitute a majority of the whole number, and at least a majority of the whole number shall be necessary to pass any ordinance, resolution or motion. The City Clerk shall record in the minute book the vote of each member on each ordinance or resolution; provided, that any ordinance authorizing the issuance of revenue bonds shall not become effective unless it is adopted by three-fourths (3/4) of the members voting affirmatively, except as provided in Section 3-31-4 of the New Mexico Statutes, 1978 Compilation. Within three (3) days after the adoption of an ordinance or resolution, the Mayor shall validate the same by endorsing "Approved" thereon and signing such or resolution. (Prior code § 2-10)

2.04.120 Compensation.

Commencing March 1990, each member of the City Commission shall receive as compensation four hundred dollars ($400.00) per month. This amount shall be effective for those members of the City Commission whose terms of office shall begin March 1990, and thereafter. (Prior code § 2-15)

Chapter 2.08 CITY OFFICERS, DEPARTMENTS, BOARDS AND COMMISSIONS GENERALLY

2.08.010 Public meetings of City Boards and Commissions.

A. Notice; Annual Resolution. The City Commission shall comply with the requirements of subsection C of Section 10-15-1 of the New Mexico Statutes, 1978 Compilation, by at least annually, in a public meeting, adopting a resolution detailing what is appropriate public notice of any public meeting of the City Commission or any other board, commission or policy making body of the City.

B. Same—Contents. Every notice required by this section shall set forth the time, place and general subject matter to be presented at the meeting.

C. Emergency Meetings. Notwithstanding any other provision of this section, the Mayor and any two (2) commissioners or any three (3) commissioners may call, with whatever notice is possible under the circumstances, a meeting of any board, committee or City Commission to consider any matter that needs emergency treatment because of a clear and present danger to the health, welfare or safety of the citizens of the City.

D. Public Hearings. Any aggrieved person shall have a right to demand a pubic hearing, without the same having been prior thereto placed on the agenda or notice given the public as herein required for scheduled meetings by boards, committees or the City Commission. (Prior code § 2-3)

2.08.020 Attendance of meetings of City Commission.

All directors, heads and chiefs of departments shall attend the regular meetings of the City Commission, unless excused by the City Manager. All other administrative employees of the City shall attend regular and special meetings when so requested by the City Manger or any member of the City Commission. All directors, heads or chiefs of departments shall attend special meetings of the City Commission when so requested by the City Manager or any member of the City Commission. (Prior code § 2-22)

2.08.030 Officers generally—Bonds.

The following officers shall, before entering upon the duties of their respective offices, execute bonds to the City, with securities to be approved by the City Commission, that they shall faithfully perform the duties of their respective offices and that they will, when they vacate their respective offices, surrender and turn onto their successors, all money, books, paper, property and other things in their custody belonging to the City. Penalties of such bonds shall be as follows:

A. For City Clerk, as provided by the City Commission, acting pursuant to State law;

B. For Deputy City Clerk, as provided by the City Commission, acting pursuant to State law;

C. For City Treasurer, as provided by the City Commission, acting pursuant to State law;

D. For Deputy City Treasurer, as provided by the City Commission, acting pursuant to State law;

E. For Municipal Judge, one thousand dollars ($1,000.00). (Prior code § 2-23)

2.08.040 Officers generally—Oath.

Every officer of the City, whether elected or appointed, shall, before entering upon the duties of his or her office, take and prescribe an oath that he or she will well and truly perform the duties of his or her office to the best of his or her skill and ability and that he or she will support the Constitution of the United States and the laws of the State. Such oath shall be in the form prescribed by law. (Prior code § 2-25)

2.08.050 Combining offices—Authority of City Manager to designate himself or herself to fill office.

Whenever, in the opinion of the City Manager, the interest of the City requires one (1) person to fill the office or position of two (2) or more departments, the City Manager may designate one (1) person to both offices; provided, that such office is not incompatible with the other; and all powers and duties now imposed by State law and this code and other ordinances of the City shall be in full force and effect as to each office. The City Manager, when in his opinion the interest of the City so requires, shall designate himself or herself to fill the office of any directorate created by the City Commission. (Prior code § 2-26)

2.08.060 Departments of water and sewer—Funds and expenditures.

The funds, income and revenue derived from the operation of the City Water Department and the City Sewer Department shall be maintained in accounts or funds separate and apart from the funds of other departments of the City, and all other funds or revenue of the City Water and Sewer Departments shall be maintained separate and apart from the other funds of the City. No expenditure from such funds shall be made contrary to the contractual obligations of the City to the holders of water revenue bonds or the holders of other water bonds, and no funds shall be transferred from the City Water Department or City Sewer Department funds to any other funds of the City, without the expressed approval of the State Director of Public Finances or otherwise than in accordance with the laws of the State.

The costs of operating the water system of the City Water Department, including the cost of administration, employees' salaries, materials and equipment and all other items of expense necessary to the operation of such system, shall be paid from revenues derived from the operation of the water system, with the approval of the City Commission.

The City Treasurer shall act as the regular custodian of all funds belonging and credited to the City Water and Sewer Departments, and all expenditures shall be by check or warrant signed by the Mayor or the Mayor pro tem and countersigned by the City Treasurer. (Prior code § 2-27)

2.08.070 Legal Department created—City Attorney generally.

There is created the Legal Department of the City. The Legal Department shall be under the control and supervision of a City Attorney, appointed by and responsible to the City Manager.

The City Attorney or any assistant City Attorney appointed by the City Manager shall be a member of the New Mexico Bar in good standing and entitled to practice law in the State. He or she shall give his or her opinion to and on legal questions, verbally or in writing, to the Mayor, City Commission, City Manager or department heads, whenever requested. He or she shall advise, when applied to, any officer, department head or employee as to the conduct of his or her office, and he or she shall prepare or approve all bonds and other writings or documents affecting the interest of the City. He or she shall represent the City as its attorney in all suits or litigations in any court in which the City is a party. He or she shall be entitled to extra compensation for special or unusual work performed, to be determined by the City Commission in each instance of service. Whenever the City Attorney or his or her assistant, by reason of interest or other reason, is disqualified because of any disability or is unable to attend any suit or proceeding, other counsel may be employed to represent the City. The City Attorney shall have the right to be heard upon all questions or motions before the City Commission amending, repealing or any way affecting any provision of this code or other ordinance enforced or enacted by the City Commission, when the legality of such action or proposed action shall be called in question. (Prior code § 2-28)

Chapter 2.12 MUNICIPAL JUDGE

2.12.010 Creation of office—Qualifications—Vacancies.

A. The office of Municipal Judge of the City is created and established. (Sections 3-10-1 and 35-14-1, N.M.S.A. 1978.)

B. The Municipal Judge shall be a resident of the City and shall be a qualified elector who shall be elected to such office for a term of four (4) years.

C. The Municipal Judge shall be elected at the regular municipal election and shall become eligible for office by filing a declaration of candidacy in the same manner and form as a declaration of candidacy of the City Commissioners. The candidates for the office of Municipal Judge shall be placed on the ballot in the same manner and font as are the candidates for the office of City Commission. In the event only one (1) qualified elector is a candidate for Municipal Judge, he or she shall be declared elected without vote, upon certification by the City Clerk. If there are no candidates for the office of Municipal Judge, the City Commissioners, after the regular municipal election and after the newly elected City Commissioners have qualified for office shall, by majority vote, designate a qualified elector as Municipal Judge.

D. If a vacancy occurs during the term of the Municipal Judge, the City Commission may appoint a duly qualified person to serve until the next regular municipal election.

E. No person is eligible for election or appointment to the office of Municipal Judge unless such person shall have graduated from high school or has attained the equivalent of a high school education as indicated by possession of a certificate of equivalency issued by the State Department of Public Education based upon the record made on the General Education Development Test.

F. The Municipal Judge shall, before taking office, take and subscribe an oath or affirmation in writing to support the constitution and law of the United States of America and the State of New Mexico and the ordinances of the City, and to impartially discharge and perform all of the duties of such office to the best of his or her ability, which oath of office shall be filed in the office of the City Clerk. (Ord. 827 § 3 (part), 1995: prior code § 9-23)

2.12.020 Jurisdiction.

The Municipal Court shall have jurisdiction over all offenses and complaints under ordinances of the municipality and may issue subpoenas and warrants and may punish for contempt. (Ord. 827 § 3 (part), 1995: prior code § 9-24)

2.12.030 Salary—Duties—Administration training.

A. The salary of the Municipal Judge shall be one thousand one hundred fifty-five dollars ($1,155.00) per week for fifty-two (52) weeks per year, payable in twenty-six (26) payments to coincide with the payroll dates of the City. No payment

shall be made when the Municipal Judge is not available and is failing to render services in violation of the anti-donation provision of the New Mexico Constitution except for the twenty (20) days per year of paid time off set forth in Section 2.12.040.

B. The Municipal Judge shall devote full time and attention to the office, including such hours on weekends and holidays as may be necessary, in order to fully and efficiently discharge the duties of such office as they may be set forth under the law of the United States, the State of New Mexico and the ordinances of the City. The Municipal Judge shall preside over all hearings at every stage of any proceeding concerning violation of this code or any other ordinances of the City and administer the community service program as provided in Section 2.16.050. The Municipal Judge shall comply with the Code of Judicial Conduct and all rules of procedure for the Municipal Courts as promulgated by the State Supreme Court.

C. Any attorney serving as the elected or appointed Municipal Judge is prohibited from engaging in the practice of law, nor shall any elected or appointed Municipal Judge or Alternate Judge hold political office during the time served as the Municipal Judge.

D. The Municipal Judge shall be responsible for providing to the Finance Director a reconciliation of accounts receivable and bond payable accounts in the current court software system to the general ledger balance beginning the first month after system compatibility is resolved and the reconciliation is brought current. Until such time as this reconciliation is possible, the Municipal Judge shall provide details of current monthly accounts receivable and bond payable account activity in a timely manner to the Finance Director in connection with the required monthly reports in paragraph E. of this section.

E. The City Finance Department shall make monthly reports of monies collected by the Municipal Court and shall be submitted to the Administrative Office of the Courts and the New Mexico Judicial Education Center. The reports shall include an itemized statement showing the different amounts collected for the fees due to the respective entities. Such reports shall be reviewed and signed by the Municipal Judge prior to their filing. The monies collected in connection therewith shall be paid by the City Finance Director not later than the tenth day of the month following collection pursuant to New Mexico statutes.

F. The elected or appointed Municipal Judge shall annually, as a condition of discharging the duties of that office, successfully complete a judicial training program conducted under the authority of the New Mexico Administrative Offices of

the Courts, unless exempted from this requirement by the Chief Justice of the Supreme Court. An Alternate Judge is not required to complete annual judicial training programs as required of the Municipal Judge. No elected or appointed Municipal Judge or Alternate Judge shall receive a salary until such judge has successfully completed and received certification of completion from the Administrative Office of the Courts, or has been exempted from the required initial judicial training program. (Section 37-14-10, N.M.S.A. 1978.) (Ord. 887 § 1, 2001; Ord. 827 § 3 (part), 1995: prior code § 9-25)
(Ord. No. 1019, 9-21-2009; Ord. No. 1028, 1-4-2010)

2.12.040 Vacation, sick leave and employee benefits.

The Municipal Judge shall receive up to twenty (20) days paid time off each year for absences due to illness, vacation or training. The paid time off shall not be accrued but made available on March 10 of each year, with no carryover year to year. The elected or appointed Municipal Judge shall attend the annual required judicial training and shall be reimbursed for reasonable expenses connected with said annual training. The Municipal Judge may elect to pay into and receive medical insurance and life insurance coverage; and the Municipal Judge may participate in the retirement plan. (Ord. 827 § 3 (part), 1995: prior code § 9-26)
(Ord. No. 1028, 1-4-2010)

2.12.050 Temporary vacancy and appointments.

A. In the event of a temporary incapacity or absence of a duly elected or appointed Municipal Judge, the Municipal Judge may appoint an acting Municipal Judge to serve during the temporary incapacity or absence of the elected Municipal Judge from a list of registered voters designated by the City Commission as provided in subsection B of this section. The determination of the absence of the Municipal Judge is left to the elected Municipal Judge.

B. Appointments of the acting Municipal Judge shall be made:

1. In writing by the elected Municipal Judge and filed in the office of the City Clerk and in the office of the Municipal Court Clerk;

2. From a list to be prepared each year by the City Commission of persons designated by the City Commission as qualified to act as acting Municipal Judge, which list shall be reflected by motion duly made, passed and adopted, and reflected in the minutes of the City Commission.

C. Compensation for acting Municipal Judges shall be determined by the City Commission annually by resolution at the time the commissioners prepare the list of eligible appointees for acting Municipal Judge. (Ord. 827 § 3 (part), 1995: prior code § 9-27)
(Ord. No. 1028, 1-4-2010)

2.12.060 Complaints and warrants.

All complaints filed with, and all warrants issued by, the Municipal Judge shall be filed and issued in conformity with the statutes of this State and the rules of court governing the prosecution of suits in Municipal Courts. (Rules of Municipal Courts, Judicial Volume 1, N.M.S.A. 1978.) (Ord. 827 § 3 (part), 1995: prior code § 9-28)

Chapter 2.16 MUNICIPAL COURT

2.16.010 Clerk of Municipal Court.

There shall be appointed to the Municipal Court a person whose title shall be designated as the Clerk of the Municipal Court. It shall be the duty of the Municipal Judge or the Clerk of the Municipal Court to maintain the docket and the records of the court as may be required by this code or other ordinances of the City. (Prior code § 9-15)

2.16.020 Collection and records of fines.

The Municipal Judge and the Clerk of the Municipal Court are hereby authorized to receive and receipt all fines assessed by the Municipal Judge, and such Judge or his duly appointed Clerks of the Court shall prepare and keep suitable and accurate books and records to reflect the collection of such fines pursuant to Section 35-14-11, N.M.S.A., 1978 annotated, and such other disposition of the case as may be imposed by the Municipal Court. The Municipal Judge and the Clerk of the Municipal Court shall accept cash, personal checks, money orders or bank cashier's checks payable to the "City of Hobbs" in payment of court fines. Personal checks for payment of court fines returned by the banking institution as unpaid shall constitute contempt of court for non-payment. All fines collected by the Municipal Judge shall be delivered to the City Treasurer daily. (Ord. 892 (part), 2002: prior code § 9-16)

2.16.030 Remitting of fine to defendant.

No fine assessed by the Municipal Judge shall be remitted to the defendant, except by and with the approval of the City Commission. (Prior code § 9-18)

2.16.040 Nolle prosequi.

The City Attorney is authorized to nolle prosequi all complaints filed in the Municipal Court when, in his or her opinion, the prosecution of such offenses is not justified. (Prior code § 9-19)

2.16.050 Suspension of sentence.

Upon the entry of a plea of guilty or a judgment of conviction of any provision of this code or other municipal ordinance, the Municipal Judge, in addition to pronouncing sentence as authorized by this code or other ordinances of the City, may:

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

B. Suspension of execution of the sentence or probation, or both, shall be granted only when the Municipal Judge is satisfied it will serve the ends of justice and of the public;

C. The defendants liability for any fine or other punishment imposed shall be fully discharged upon successful completion of the terms of probation;

D. As part of a sentence or as a condition of probation, require the defendant to serve a period of time in volunteer labor to be known as community service. The type of labor and period of service shall be at the sole discretion of the Court; provided, that any person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and any person who performs community service pursuant to court order or any criminal diversion program shall not be entitled to any wages, shall not be considered an employee for any purpose and shall not be entitled to workman's compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this section, "community service" means any labor that benefits the public at large or any public, charitable or educational entity or institution;

E. At the sole discretion of the Judge, permit any participant in the Hobbs Alternative Program, who has completed all mandatory community service

hours to work for the Municipal Corporation, at such labor as his strength will permit, not exceeding ten (10) hours each working day. Each participant shall receive credit for the reduction of any fine, court costs and fees, including, but not limited to, judicial training fees, court automation fees, and any other statutory imposed fees, in the amount equivalent to the current federal minimum wage rate for each hour of work performed. This section shall be administered pursuant to the Hobbs Police Department Rules and Regulations.

F. At the sole discretion of the Judge, permit any defendant who is not sentenced to community service or subject to community service as a condition of probation but who is unable to pay fines and/or court costs and fees to perform community service as provided in paragraph E. of this section.

G. The Municipal Judge shall be responsible for providing appropriate, itemized financial information with respect to the fines, court costs, and fees as provided in paragraph E. and F. herein to the City Finance Department each month in a timely manner to allow all mandatory reporting to be accomplished by the Finance Director. (Ord. 892 (part), 2002; Ord. 833, 1996; prior code § 9-20)

(Ord. No. 1030, 2-16-2010; Ord. No. 1032, 6-21-2010)

Editor's note—Ord. No. 1030, adopted Feb. 16, 2010, changed the title of § 2.16.050 from Suspension of sentence—probation—community service to Suspension of sentence.

2.16.060 Interpreter.

The Municipal Judge shall be authorized to appoint an interpreter for trial of cases within the Municipal Court, when the services of an interpreter shall he required. Such interpreter shall be sworn as provided by State law. (Prior code § 9-22)

2.16.070 Complaint and warrant prerequisite to trial.

The Municipal Judge, before proceeding to try any person for the violation of any provision of this code or other ordinance of the City, shall cause a complaint to be made and warrant to be issued to arrest such person and return to be made on such warrant, except in those arrests as prescribed by law which do not require a warrant and those cases in which persons appear pursuant to citation or complaint and summons. (Prior code § 9-5)

2.16.080 Arraignment.

Upon being arrested for the violation of any misdemeanor, the person arrested shall be immediately arraigned before the Municipal Judge, if Municipal Court is in

session and a written complaint shall thereupon be filed by the arresting officer, or some other officer for him or her, if no other complaint has theretofore been filed. (Prior code § 9-6)

2.16.090 Bail bond.

If, upon being arraigned, the defendant shall plead "not guilty," he or she may be released by giving bail, in an amount to be set by the Municipal Judge, conditioned upon his or her appearance for trial at the time set by the Municipal Judge. (Prior code § 9-7)

2.16.100 Cash bail.

In the event an arrest is made when the Municipal Court is not in session, the person arrested shall be entitled to give cash bail, in an amount set by the Municipal Judge for a particular offense, for his appearance at the next session of the Municipal Court. The person accepting cash bail shall give a written receipt for the amount thereof, and cash bail shall be taken only at the police station and in the presence of witnesses. The Chief of Police or his authorized representative hereby is authorized to accept such cash bail as may be designated by the Municipal Judge for anyone charged with an offense against the City during such time as the municipal court is not in session. (Prior code § 9-100)

2.16.110 Appearance bond—Form.

In the event a person arrested is unable to or does not desire to post a cash bail, the person arrested may post a recognizance for his appearance, which appearance bond shall be in substantially the following form:

APPEARANCE BOND—MUNICIPAL COURT

STATE OF NEW MEXICO	)	
COUNTY OF LEA	) ss:	In City Municipal Court,
CITY OF HOBBS	)	Precinct No. _____
	Before _____, Municipal Judge	

KNOW ALL MEN BY THESE PRESENTS, That _____, as principal, and _____, as securities, are held and firmly bound unto the City of Hobbs in the penal sum of ;rule dollars, for payment,

of which, well and truly to be made, we bind ourselves jointly and severally, our heirs, executors and administrators, firmly by these presents. Signed with our seals and dated this _____ day of _____, A.D. 20____.

The condition of the above obligation is such that whereas the above bonded principal _____ has been required by _____, Chief of Police _____, New Mexico, to be present before the Municipal Judge of the City of Hobbs _____, in New Mexico at its session to be held at his office at _____, New Mexico, in and for the City of Hobbs, State of New Mexico, on the _____ day of _____, A.D., 20 ____, to answer before said court to the charge of _____, therein pending against him.

Now if the said _____ shall appear before said Municipal Court on the _____ day of _____, A.D., 20____, at ten o'clock a.m. to answer unto said charge and continue in attendance from day to day thereafter during the session of said court and abide by the orders of said Court in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

APPROVED BY ME:

_____ _____

SEAL)_____

Chief of Police _____

SEAL)_____

_____ Principal Signor

City of Hobbs

Per _____ _____

SEAL)_____

Signor

(Prior code § 9-9)

2.16.120 Appearance bond—Qualifications of sureties.

The surety on each recognizance bond required pursuant to this article shall meet the qualifications established for such sureties by State law. When two (2) or more sureties are offered to the same recognizance they shall have, in the aggregate, the qualifications prescribed in this section; provided, that whenever by the laws of this State, a surety company is authorized to become surety on

recognizance bonds, such company may be accepted as sufficient surety on any such bond. (Prior code § 9-10)

2.16.130 Appearance bond—Surrender of principal.

When a surety in any recognizance desires to surrender his principal, he may deliver such principal to the Chief of Police or to any authorized police officer of the City at the City jail and thereafter be released from liability by virtue of such recognizance bond. (Prior code § 9-11)

2.16.140 Persons not entitled to bail.

If a person, when arrested, is intoxicated or under the influence of narcotics to such an extent that it would be dangerous to permit him to remain at large, or if for any other reason it is deemed expedient to hold him in custody he shall not be entitled to make bail but may be confined to the City jail to await the opening of municipal court the following court day. (Prior code § 9-12)

2.16.150 Forfeiture of bail.

When any person shall have given cash or bail bond after having been arrested for the violation of any provision of this code or other ordinance and fails to appear at the designated hour for trial, it shall be the duty of the municipal judge, after waiting for one (1) hour, to declare such cash bail or bail bond forfeited, and he shall enter judgment of forfeiture on his docket (Prior code § 9-13)

2.16.160 Docket.

All cases filed in the municipal court shall be docketed by the Municipal Judge or his duly appointed clerk of the court, in the name of the City against the defendant. Such judge or his duly appointed clerk shall cause to be entered on the docket the style of the cause and shall give a number to such cause. The Municipal Judge or his duly appointed clerk shall record in the docket the minutes of each step taken in such case and the disposition of such cause, including the penalty assessed against the defendant and the notation therein if an appeal is taken from the decision of the municipal court to the district court. (Prior code § 9-14)

2.16.170 Appeals.

Whenever, in accordance with State law, the defendant in any case may be entitled to appeal, the same shall be allowed in accordance therewith by filing a bond in an amount set by the Municipal Judge, with two (2) sufficient securities in

double the amount of the highest pecuniary penalty which could or might have been assessed in that case; provided, that such appeal shall not operate as a supersedeas in such cases until such bond shall have been given and approved, and no cause shall be demanded as the condition of such appeal. (Prior code § 9-15)

Chapter 2.20 CEMETERY BOARD

2.20.010 Created—Composition—Appointment of members—Oath.

There is created a nonpolitical body known as the Cemetery Board, to be constituted of six (6) members, who shall be residents of the City and who shall be appointed by the Mayor with the approval of a majority of the City Commission and responsible to the City Commission. All members of the Cemetery Board shall qualify for office by taking an oath to faithfully and impartially discharge the duties of the office. (Prior code § 2-53)

2.20.020 Terms—Organization.

Members of the Cemetery Board shall hold office for a term of two (2) years. The terms of the members of the Cemetery Board shall commence on April 1st of the year in which the appointment is made and shall expire on March 31st; provided, that every member of the existing Cemetery Board shall be a member of the Cemetery Board until the expiration of the term for which such member was appointed. The Cemetery Board, when so appointed, shall meet and organize its body by electing one (1) of the members as President, one (1) of the members as Vice President and one (1) of the members as Secretary. Thereafter, annually and within forty-five (45) days after the appointment of the incoming members, the Cemetery Board shall reelect its officers. (Ord. 878 (part), 2001: prior code § 2-54)

2.20.030 City Clerk to serve as Cemetery Board Clerk and Treasurer.

The City Clerk shall serve as Clerk and Treasurer of the Cemetery Board without additional compensation. (Prior code § 2-55)

2.20.040 Compensation—Removal of members—Vacancies.

The members of the Cemetery Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Cemetery Board for cause and shall fill any vacancy on the Cemetery Board that may occur. (Prior code § 2-56)

2.20.050 Meetings and quorum.

The Cemetery Board shall meet regularly, at least quarterly, on a regular date to be designated by the Cemetery Board; provided, that a special meeting may be called at any time by written request to the president of the Cemetery Board by three (3) members, or on call by the President with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Ord. 878 (part), 2001: Ord. 865, 2000: prior code § 2-57)

2.20.060 Powers and duties generally.

The Cemetery Board shall have the power and authority to plan the development of the City cemeteries, for submission to the City Commission for approval, and shall be charged with the duties of carrying out the policies of the City Commission with reference to the City cemeteries. The Cemetery Board shall recommend to the City Commission all necessary rules and regulations governing the use and care of the City cemeteries. The Cemetery Board shall submit a copy of the minutes of each meeting to the City Commission. (Prior code § 2-58)

Chapter 2.24 HUMAN RELATIONS BOARD

2.24.010 Created—Composition—Appointment of members.

There is created the Human Relations Board, which shall consist of six (6) members. Its members shall be residents of the City who shall be appointed by the Mayor with the confirmation and consent of the City Commission. (Prior code § 2-83)

2.24.020 Terms—Organization.

The Mayor shall initially appoint three (3) members for one-year terms and three (3) for two-year terms. Each year thereafter, the Mayor shall appoint three (3) members to two-year terms. The terms of the members shall commence on the first day of April of the year appointed and expire on March 31st of the year in which their term ends. Each year, at its first meeting after April 1st, the Board shall organize itself by electing a Chairperson, a Vice-Chairperson and a Secretary. (Prior code § 2-84)

2.24.030 Compensation—Removal of members—Vacancies.

The members of the Human Relations Board shall serve without compensation; except, that they may be reimbursed for travel outside of the City caused by their membership as provided in the State Per Diem Act. Members shall serve until their successors are appointed or until removed for cause by the City Commission. The Mayor, with the consent of the City Commission, shall appoint successors to fill vacancies created by resignation, death or removal for cause, such successors to serve for the balance of the term of the member replaced. (Prior code § 2-85)

2.24.040 Meetings—Quorum.

The Human Relations Board shall meet at least once per month, on a regular date to be fixed by the Board. A special meeting may be called by any three (3) members or by the Chairperson. All meetings shall be conducted in compliance with the State Open Meetings Act. A majority of the membership shall constitute a quorum and no action will be taken in the absence of a quorum. (Prior code § 2-86)

2.24.050 Powers and duties generally.

The Human Relations Board shall have the power and authority to monitor the effect of City-provided services on residents of the City, paying special attention to the elderly, physically and mentally handicapped, minority groups and the economically disadvantaged. The Board shall recommend changes or improvements in the way City services are rendered so as to better serve the people of the City, especially those with special problems and needs. The Board shall advise the City Commission as to available programs which would enable the City to help its citizens in constructive ways at a minimum cost to the City. It shall advise as to possible steps which could be taken to improve relations among the various segments of the City's population. (Prior code § 2-87)

2.24.060 Subcommittees—Public hearings.

The Human Relations Board may appoint subcommittees to advise and counsel the Board on matters within the jurisdiction of the Board as determined in Section 2.24.050. The Human Relations Board and its subcommittees may conduct public hearings on questions properly before them. (Prior code § 2-88)

Chapter 2.28 COMMUNITY AFFAIRS BOARD*

2.28.010 Created—Composition—Appointment of members—Oath.

There is created a nonpolitical body known as the Community Affairs Board to be constituted of seven (7) members, who shall be residents of the City and who shall

***Note—**Prior history: Ords 878, 866, 834 and prior code §§ 2-46—2-51.

be appointed by the Mayor, with the approval of a majority of the City Commission, and responsible to the City Commission. All members of the Community Affairs Board shall qualify for office by taking an oath to faithfully and impartially discharge the duties of the office. (Ord. 911 (part), 2003)

2.28.020 Terms—Organization.

The term of each of the Community Affairs Board members shall be for two (2) years. The terms of the members of the Community Affairs Board shall commence on April 1st of the year in which the appointment is made and shall expire on March 31st; provided, that every member of the existing Community Affairs Board shall be a member of the Community Affairs Board until the expiration of the term for which such member was appointed to the Community Affairs Board. The Community Affairs Board, when so appointed, shall meet and organize its body by electing one (1)of the members as Chairperson, one (1) of the members as Vice Chairperson and one (1) of the members as Secretary. Thereafter, annually and within forty-five (45) days after the appointment of the incoming members, the Community Affairs Board shall reelect its officers. (Ord. 911 (part), 2003)

2.28.030 Compensation—Removal of members—Vacancies.

The members of the Community Affairs Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may of its own or upon Community Affairs Board recommendation remove a member of the Community Affairs Board for cause and shall fill any vacancy on the Community Affairs Board that may occur. (Ord. 911 (part), 2003)

2.28.040 Meetings and quorum.

The Community Affairs Board shall meet regularly at least once a month, on a regular date to be designated by the Community Affairs Board; provided, that a special meeting may be called at any time by the written request to the Chairperson of the Community Affairs Board with the written consent of all members of the Community Affairs Board. All meetings, whether regular or special, shall be open to the public as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Ord. 911 (part), 2003)

2.28.050 Adoption of rules and regulations.

The Community Affairs Board shall adopt rules and regulations for the government of its own proceedings and to carry out the purposes for which such commission is created, not inconsistent with the legislative acts of the State, this code and other ordinances of the City. (Ord. 911 (part), 2003)

2.28.060 Powers and duties generally.

A. The Community Affairs Board shall have the following powers and authority:

1. To carry out the policies of the City Commission with reference to Community Affairs including the Parks System, the recreational facilities and the recreational activities and programs as well as landscape programs and initiatives, beautification and clean-up;
2. To aid the Community Affairs staff in the planning and development of the Park and Recreation System and Community Affairs through open meetings and communications with citizens;
3. To make recommendations and report issues concerning the Community Affairs and Parks and Recreation System to include maintenance, facilities, and programs;
4. To initiate and advise necessary rules and regulations pertaining to the use and care of community facilities and recreational areas;
5. To appoint members to the Senior Citizen Advisory Council.

B. The Community Affairs Board shall submit a copy of the minutes of each meeting to the City Commission.

C. The Community Affairs Board may interview and recommend to the City Commission the employment of a consultant for the preparation of any plan, master plan, proposal or ordinance relative to City parks, community services and programs; provided, that the employment of any such consultant and the determination of the consideration, fees or salaries for such services shall be vested solely in the City Commission. (Ord. 911 (part), 2003)

Chapter 2.32 PLANNING BOARD

2.32.010 Created—Composition—Appointment of members—City Engineer and City Attorney to act in advisory capacity—Oath—Liaison.

A. There is created a City Planning Board, which shall consist of seven (7) members, six (6) who shall be residents of the City, and one (1) member located outside of the municipal boundaries who shall reside within the five (5) mile

extraterritorial planning and platting jurisdiction of the City, who shall be appointed by the Mayor with the approval of a majority of the City Commission and who shall be responsible to the City Commission. The City Engineer and the City Attorney shall act in an advisory capacity to such Board. All members of the Planning Board shall qualify for office by taking an oath to faithfully and impartially discharge the duties of the office.

B. One (1) member of the City Commission shall be a liaison to the Planning Board, without vote. This liaison shall be appointed by the Mayor with the approval of a majority of the City Commission. (Ord. 897, 2002: Ord. 878 (part), 2001: prior code § 2-73)
(Ord. No. 1053, 4-16-2012)

2.32.020 Terms—Organization.

The term of each of the appointed members of the Planning Board shall be for two (2) years; except, that when the Planning Board members are first appointed, a majority of the members shall be appointed for one-year terms and the balance of the members shall be appointed for two-year terms. The terms of the members of the Planning Board shall commence on April 1st of the year in which the appointment is made and shall expire on March 31st; provided, that every member of the existing Planning Board shall be a member of the Planning Board until the expiration of the term for which such member was appointed to the Planning Board. The Planning Board, when so appointed, shall meet and organize its body by electing one (1) of the members as Chairperson, one (1) of the members as Vice Chairperson and one (1) of the members as Secretary. Thereafter, annually and within ten (10) days after the appointment of the incoming members, the Planning Board shall reelect its officers. (Prior code § 2-79)

2.32.030 Compensation—Removal of members—Vacancies.

The members of the Planning Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Board for cause and shall fill any vacancy on the Planning Board that may occur. (Prior code § 2-75)

2.32.040 Meetings and quorum.

The Planning Board is scheduled to meet once a month. Requests for meetings shall be turned into the City Engineering Department and can be held upon

concurrence of a majority of the Planning Board members. A special meeting may be called at any time by the written request to the Chairperson of the Planning Board by three (3) members, or on call by the Chairperson with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Ord. 878 (part), 2001: prior code § 2-76)

2.32.050 Adoption of rules and regulations.

The Planning Board shall adopt rules and regulations for the government of their own proceedings and to carry out the purposes for which such commission is created, not inconsistent with the legislative acts of the State, this code and other ordinances of the City. (Prior code § 2-77)

2.32.060 Powers and duties generally.

It shall be the duty of the City Planning Board to carry out the provisions of law relating to planning and platting, to formulate general plans and designs to promote the welfare, beauty and comfort of the City and to improve and develop means of municipal improvement. The Planning Board shall, from time to time, submit to the City Commission reports, maps and plans for such purposes. The Planning Board is authorized to interview and recommend to the City Commission the employment of expert City Planners, Engineers, Landscape Architects or other planning consultants for the preparation of any plan, master plan, proposal or ordinance relative to City planning; provided, that the employment of any such consultant or expert and the determination of the consideration, fees or salaries for such services shall be vested solely in the City Commission. The Planning Board shall submit a copy of the minutes of each meeting to the City Commission. (Prior code § 2-78)

2.32.070 Time permitted for recommendations on plans, master plans, proposals or ordinances.

Whenever any plan, master plan, proposal or ordinance relating to matters coming within the duties or jurisdiction of the City Planning Board shall have been referred to the City Planning Board for consultation or advice, the City Planning Board shall return the same to the City Commission, with its report and recommendations thereon in writing, within fifty (50) days after the same shall have been referred to the City Planning Board, unless the City Commission shall, in referring the same, direct that a longer or shorter period shall be allowed for such report;

provided, that upon the request or recommendation of the City Planning Board, the time for the making of such report and recommendation may be extended, within the discretion of the City Commission. (Prior code § 2-79)

2.32.080 City not to act on plans or master plans until expiration of time allowed for Board's reports and recommendations.

When any plan, master plan, proposal or ordinance shall have been referred by the City Commission to the City Planning Board, the City shall not take action thereon until the expiration of the time allowed for the report and recommendation of the Board. (Prior code § 2-80)

2.32.090 Advisory subcommittees—Public hearings.

The Planning Board is authorized to appoint advisory subcommittees, consisting of residents of the City, to assist the Planning Board in their deliberations and recommendations on plans, master plans, proposals or ordinances. Such subcommittees and the Planning Board are authorized to conduct public hearings on all matters relative to the authority vested in the Planning Board by this chapter. (Prior code § 2-81)

2.32.100 Duty to keep informed on City planning, submit reports and recommendations concerning development generally.

It shall be the duty of the City Planning Board to keep itself informed as to the progress of planning in the City and other communities and to make studies and recommendations for the improvement of the sanitation, recreation and general welfare of the public and to improve traffic transportation and the general convenience of the public. They shall submit to the City Commission, from time to time, plans, reports and recommendations concerning the development of facilities for public recreation, the development and improvement of public parks, boulevards, highways and other grounds and the extension and opening of streets and highways. (Prior code § 2-82)

Chapter 2.36 PUBLIC LIBRARIES BOARD

2.36.010 Created—Composition—Appointment of members—Oath.

There is created the Planning Libraries Board, which shall consist of six (6) members, who shall be residents of the City, who shall be appointed by the Mayor with the approval of a majority of the City Commission and who shall be responsible to the City Commission. All members of the Library Board shall qualify for office by taking an oath to faithfully and impartially discharge the duties of the office. (Prior code § 2-60)

2.36.020 Terms—Organization.

Three of the members first appointed shall serve for one (1) year and three (3) for two (2) years. Thereafter, there shall be appointed by the Mayor and approved by the City Commission three (3) members of the Planning Libraries Board, who shall serve for a two-year term. The terms of the members of the Library Board shall commence on April 1st of the year in which the appointment is made and shall expire on March 31st; provided, that every member of the existing Library Board shall be a member of the Board until the expiration of the term for which such member was appointed. The Library Board, when so appointed, shall meet and organize its body by electing one (1) of the members as Chairperson, one (1) of the members as Vice Chairperson and one (1) of the members as Secretary. Thereafter, annually and within ten (10) days after the appointment of the incoming members, the Library Board shall reelect its officers. (Prior code § 2-61)

2.36.030 Compensation—Removal of members—Vacancies.

The members of the Library Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Library Board for cause and shall fill any vacancy on the Library Board that may occur. (Prior code § 2-62)

2.36.040 Meetings—Quorum.

The Library Board shall meet regularly, at last once a month, on a regular date to be designated by the Library Board; provided, that a special meeting may be called at any time by written request to the Chairperson of the Library Board by three (3) members, or on call by the Chairperson with the written consent of all members of the Board. All meetings, whether special or regular, shall be open to the public as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Prior code § 2-63)

2.36.050 Powers and duties generally.

The Library Board shall have the power and authority to plan the development of the public libraries within the City, for submission to the City Manager for approval and recommendation to the City Commissioners, and shall be charged with the duties of carrying out the policies of the City Commission with reference to the public libraries. The Library Board shall recommend to the City Commission all

necessary rules and regulations governing the use and care of the public libraries. The Library Board shall review the annual budget as prepared by the librarian for each fiscal year and shall make recommendations to the City Manager for submission to the City Commission. The Library Board shall submit a copy of the minutes of each meeting to the City Commission. (Prior code § 2-64)

2.36.060 Subcommittees—Public hearings.

The Library Board may appoint advisory subcommittees, consisting of residents of the City, to advise and counsel the Library Board on library matters. Such subcommittees and the Library Board are authorized to conduct public hearings on all matters relative to the authority vested in the Library Board by this chapter. (Prior code § 2-65)

Chapter 2.40 UTILITIES BOARD

2.40.010 Created—Composition—Appointment of members—Utilities Director and City Attorney to act in advisory capacity—Oath—Liaison.

There is created a nonpolitical body known as the Utilities Board, to be constituted of five (5) members, who shall be residents of the City, who shall be appointed by the Mayor with the approval of a majority of the City Commission and who shall be responsible to the City Commission. The City Utilities Director and the City Attorney shall act in an advisory capacity to such Board. All members of the Utilities Board shall qualify for office by taking an oath to faithfully and impartially discharge the duties of the office. One (1) member of the City Commission shall be a liaison to the Utilities Board, without vote. This liaison shall be appointed by the Mayor with the approval of a majority of the City Commission. (Ord. 907 (part), 2003: prior code § 2-68)

2.40.020 Terms—Organization.

Three of the members of the Utilities Board first appointed shall serve for one (1) year and two for two years. Thereafter, there shall be appointed by the Mayor and approved by the City Commission three members of the Utilities Board who shall serve for a two-year term. The terms of the members of the Utilities Board shall commence on April 1st of the year in which the appointment is made and shall expire on March 31st, two years later. The Utilities Board, when so appointed, shall meet and organize its body by electing one of the members as Chairperson, one of the members as Vice Chairperson and one of the members as Secretary. There-

after, annually the Utilities Board shall reelect its officers at the next regularly scheduled board meeting after the appointment of the incoming members. (Ord. 907 (part), 2003: prior code § 2-69)
(Ord. No. 1026, 12-7-2009)

2.40.030 Compensation—Removal of members—Vacancies.

The members of the Utilities Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Utilities Board for cause and shall fill any vacancy on the Utilities Board that may occur. (Ord. 907 (part), 2003: prior code § 2-70)

2.40.040 Meetings and quorum.

The Utilities Board shall meet regularly at least once each quarter, on a regular date to be designated by the Utilities Board; provided, that a special meeting may be called at any time by written request to the Chairperson of the Utilities Board by three (3) members, or on call by the Chairperson with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Ord. 907 (part), 2003: prior code § 2-71)

2.40.050 Adoption of rules and regulations.

The Utilities Board shall have the authority to adopt rules and regulations for the government of their own proceedings and to carry out the purposes for which such Board is created, not inconsistent with the legislative acts of the State, this code and other ordinances of the City. (Ord. 907 (part), 2003: prior code § 2-72)

2.40.060 Powers and duties generally.

The Utilities Board shall have the power and authority to advise concerning the planning of the developments and management of the City Utilities Division and to make rules and regulations as are necessary to manage and operate the Utilities Division, subject to approval of the City Commission, and shall be charged with the duty of carrying out policies of the City Commission with reference to the City Utilities Division. The Utilities Board shall have no power to mortgage, pledge or

otherwise encumber the City or any part thereof or the revenues derived from its operation. The Utilities Board shall submit a copy of the minutes of each meeting to

the City Commission. (Ord. 907 (part), 2003: prior code § 2-72.1)

Chapter 2.44 RESERVED.

Editor's note—Ord. No. 1093, adopted April 4, 2016, repealed chapter 2.44, which pertained to the "Hobbs Industrial Air Park Board" and derived from the Prior Code §§ 2-34—2-43.

Chapter 2.48 POLICE RESERVE FORCE

2.48.010 Established.

A Police Reserve Force for the City of Hobbs is established. (Prior code § 19A-11)

2.48.020 Appointment by Chief of Police—Approval by City Manager.

Subject to final approval by the City Manager, members of the Police Reserve Force shall be appointed or relieved at the discretion of the Chief of Police and shall serve as police officers during the actual discharge of official duties. (Prior code § 19A-12)

2.48.030 Number of officers.

The Police Reserve Force shall not exceed in number the total number of regular police officers. (Prior code § 19A-13)

2.48.040 Chief of Police to establish rules and regulations.

The Chief of Police shall establish rules and regulations governing the reserve force, including but not limited to qualifications, standards of training and discipline for applicants, trainees and members. (Prior code § 19A-14)

2.48.050 When force to serve—Status of members when not in active service.

Members of the Police Reserve Force shall serve at the discretion of the Chief of Police and may be called into active service at any time the Chief of Police considers it necessary to have additional police officers to preserve the peace and enforce the law. Except while engaged in active service, members of the reserve force: (1) shall not have status as police officers; (2) shall not have any power, authority or duties as police officers; and (3) shall not represent, identify or hold

themselves out to be police officers. (Prior code § 19A-15)

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2.48.060 Compensation and benefits—Uniforms.

Members of the Police Reserve Force shall serve without compensation. After approval by the City Commission of budget requirements, uniforms or a uniform allowance may be provided to the reserve police officers at the discretion of the Chief of Police. The City may, at its discretion, provide hospital, medical and other insurance benefits for members of the Police Reserve Force who sustain injury in the course of performing official duties as reserve officers. Reserve officers shall not be eligible for any other personnel benefits of the City. (Prior code § 19A-16)

2.48.070 Reserve officers not to assume full-time duties.

Reserve police officers shall act only in a supplementary capacity to the regular police force and shall in no case assume the full-time duties of regular police officers. (Prior code § 19A-17)

Chapter 2.52 DEPARTMENT OF CIVIL PREPAREDNESS

2.52.010 Established.

There is established a Department of Civil Preparedness, in accordance with Section 12-10-5 N.M.S.A., 1978 Comp., which shall consist of:

A. A Coordinator of Civil Preparedness who shall be appointed by the City Manager with the concurrence of the City Commission and subject to approval by the Director of the Civil Preparedness Division of the State;

B. Such additional professional and administrative staff personnel as may be required to effectively carry out the civil preparedness program;

C. All other City officers and employees, together with these volunteer forces enrolled to aid them during periods of emergency, shall be considered as part of the Civil Preparedness Organization of the City. (Prior code § 8A-1)

2.52.020 Purpose.

The purpose of the Civil Preparedness Organization is to coordinate the efforts of all municipal agencies and employees and nongovernmental agencies to prepare for, and function in the event of, emergencies endangering the lives and property of the citizens of the City. It shall be the duty of such organization to coordinate the development of plans for the effective employment of municipal resources to protect the lives and health of the citizens of the City and the private and public property therein from the effects of natural or man caused disasters, including acts

of war, and to coordinate the implementation of such plans during periods of emergency. Such plans shall be coordinated with those of the county and in consonance with the State civil preparedness plans. (Prior code § 8A-2)

2.52.030 Coordinator's duties and authority.

A. The Civil Preparedness Coordinator shall be the Executive Head of the Department of Civil Preparedness. He or she shall be responsible to the City Manager for the organization, administration and operation of the civil preparedness program of the City. The City Manager shall report to and keep the City Commission informed as to the activities of the Coordinator. The Coordinator shall coordinate the civil preparedness activities of all municipal departments and agencies and nongovernmental agencies, and shall maintain liaison with and cooperate with the civil preparedness agencies of the Federal Government, the State and the other political subdivisions therein.

B. The Coordinator shall have all necessary authority to act for the government of the City in all matters pertaining to civil preparedness, including the obligation of such municipal funds as may be appropriated for civil preparedness purposes. He or she shall develop an organizational structure for the department, subject to the approval of the City Manager and the City Commission, and is authorized to make appointments to fill the positions established therein. (Prior code § 8A-3)

2.52.040 Funds.

A. Funds for necessary expenses of the Department of Civil Preparedness, including salaries for approved paid positions, may be made available through appropriations by the City Commission in accordance with Section 12-10-7 N.M.S.A., 1978 Comp.

B. The Coordinator shall prepare and submit to the Commission through the City Manager an annual proposed budget for civil preparedness expenditures, and shall indicate therein those amounts eligible for matching funds under the Federal civil preparedness assistance programs.

C. Civil preparedness funds may be obligated by the Coordinator only in the amounts appropriated and for the purposes authorized by the City Commission. (Prior code § 8A-4)

Chapter 2.56 Personnel Rules

Article 1 General Provisions

2.56.010 Title and scope.

This chapter shall constitute and be referred to as the official personnel rules of the City. This chapter shall apply to all employees and appointed officials of the City. (Ord. 916 (part), 2003)

2.56.020 Personnel manual—Adopted—Personnel merit system adopted.

By and under the authority of Section 3-13-4, New Mexico Statutes, 1978 Compilation, there is adopted by reference the Hobbs, New Mexico, Personnel Rules dated November 3, 2003, for the purpose of establishing a merit system for the hiring, promotion, discharge and general regulation of employees of the City.

All employees of the City shall be hired, promoted, discharged and compensated on the basis of merit and without regard to race, creed, color, ancestry, national origin, religious or political affiliation, age, sex, sexual orientation, physical or mental disability, or serious medical condition in compliance with State or Federal law. (Ord. 916 (part), 2003)

2.56.030 Definitions.

The definitions in this section shall be used for descriptive purposes. If any conflict occurs between these definitions and the rule or regulation to which the definitions apply, the latter shall take precedence. 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:

"Acting appointment" means temporary assignment of an employee to a different classification in accordance with this chapter.

"Acting City Manager" means the person appointed from time to time by the City Manager who shall serve temporarily as City Manager when the short term absence or incapacity of the City Manager requires. The acting City Manager shall have all the duties, authority and responsibilities of the City Manager during his or her temporary tenure.

"Anniversary date" means the annual anniversary of the time when an employee first became a regular employee and received leave, pension and other benefits.

"Appeal" means a written, formal complaint by a non-probationary employee based on a disciplinary action taken by management resulting in the employee's suspension, demotion or dismissal for cause.

"Appointment" means formal authorization of the hiring of an individual.

"At-will employee" means an employee who serves at the pleasure of the City Manager and shall not be entitled to rights of grievance and appeal. These employees include department heads, probationary employees and temporary/seasonal employees.

"Benefits" means leave, insurance, pension and other remuneration to employees, in addition to salary paid for services rendered.

"Calendar days" means consecutive calendar days.

"Calendar year" means January 1st through December 31st.

"Callback" means unscheduled work required of an employee that requires the employee to return to the work site after leaving the work site at the end of the regular working day.

"Cause" means motive or reason for discipline of regular employees.

"City Charter" means the governing document approved through an election.

"Class" means one (1) or more positions so nearly alike in the essential character of their duties and responsibilities that the same pay grade, title and qualification requirements can be applied.

"Classification" means analysis based on comparative duties, responsibilities and qualifications by which appropriate classes are determined.

"Demotion" means the removal of an employee from a position of one (1) class to a position of another class with a lower maximum pay rate.

"Department head" means administrative personnel, as defined by resolution, reporting directly to the City Manager. Department heads serve at the pleasure of the City Manager and shall not be entitled to rights of grievance and appeal. Division heads and other high level supervisors or administrative personnel may, from time to time and except as otherwise provided by this chapter, be designated to act on behalf of a department head.

"Discipline" means action taken with regard to an employee, including reprimand, suspension, demotion or dismissal.

"Dismissal" means the involuntary separation of an employee from employment by the City Manager.

"Employee" means an authorized and appointed incumbent of a position in the municipal service.

"Grievance" means a written, formal complaint by an eligible employee.

"Incumbent" means the current occupant of a position in the municipal service.

"Job title" means the designation which becomes the official title allocated to that position for all personnel purposes.

"Job vacancy" means a position which is not occupied.

"Layoff" means the separation of an employee which occurs when a regular position has been abolished because of material changes in duties, or shortage or stoppage of work or funds, or other reasons in the best interest of the City.

"Leave" means an authorized absence from regularly scheduled work hours.

"Non-regular employee" means a probationary employee who shall not be entitled to rights of grievance and appeal or an employee appointed to a position who is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal.

"Overtime" means time a non-exempt employee is directed and authorized to work in excess of the standard workweek, or for certified police and fire personnel, the standard work period.

"Part-time employee" means an employee who works less than forty (40) hours per week.

"Pay or compensation plan" means the aggregate of pay rates assigned to each class of positions in the classified plan.

"Pay range" means those points between and including the minimum and maximum rates of pay established for a class by the classification and pay plan.

"Payroll calendar year" means that period of time encompassing the first day of the pay period represented by the first payday in a calendar year through the last day of the pay period represented by the last payday in the same calendar year.

"Performance review" means a written evaluation of the job performance of an employee by a supervisor.

"Performance review date" means the scheduled time when employee performance shall next be assessed pursuant to the City Pay Plan.

"Personnel Director" means the administrative person who has supervisory and administrative responsibility for the personnel management function of the City.

"Position" means the aggregate of duties and responsibilities performed by one (1) person. A position may be regular, part-time, temporary or acting and may be occupied or vacant.

"Position description" means a written statement of the characteristic duties, responsibilities and qualification requirements that distinguish a given position from other positions.

"Prevailing market rate" means the level of pay for a given class within a given labor market area.

"Probationary period" means a trial period during which the employee serves at the will of the City Manager and may be terminated without cause.

"Promotion" means the change of an employee from a position of one (1) class to a higher level position.

"Reclassification" means the process of analysis by which an established position is reviewed to determine whether the duties and responsibilities of that position have materially changed.

"Regular employee" means an employee who has been appointed to a regular position in accordance with this chapter, who shall receive all leave and benefits in proportion to hours worked and who shall be entitled to rights of grievance and appeal except during the probationary period. A regular employee may be full-time or part-time.

"Regular position" means a full-time or part-time position that has been designated in the annual budget to receive all leave and benefits in proportion to hours worked.

"Reprimand" means a censure of an employee by a supervisor.

"Resignation" means the voluntary termination of an employee from the municipal service.

"Retirement" means the voluntary termination of an employee due to the employee's eligibility for immediate retirement under the applicable State retirement plan, consistent with all applicable laws.

"Seasonal employee" means an employee who has been appointed to a seasonal position who is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal. A seasonal employee may be full-time or part-time.

"Selection techniques" means methods by which the suitability of job applicants are compared in order to determine whether to appoint any of them and, if so, which applicant to appoint.

"Shift employee" means an employee who, upon employment, may be required to work holidays and weekends.

"Supervisor" means an employee who has been given the authority in the interest of the employer to assign, direct or reprimand subordinate employees, or effectively recommend such action. Supervisory personnel also have the power to recommend formal disciplinary actions.

"Suspension" means an absence without pay imposed on an employee for disciplinary reasons by a department head.

"Temporary employee" means an employee who has been appointed to a temporary position in accordance with this chapter, who is not eligible to receive leave and benefits, except those required by law, and who is not entitled to rights of grievance and appeal. A temporary employee may be full-time or part-time.

"Temporary position" means a full-time or part-time position created to last no more than nine (9) consecutive months and has not been designated in the annual budget to receive leave and benefits.

"Termination" means the voluntary or involuntary end of employment of an individual employee.

"Transfer" means the appointment or assignment of an employee to a new position either (i) within the same classification or (ii) within a new classification still within the municipal service.

"Workers' compensation" means the program established to provide benefits to employees injured on the job. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.040 Applicability—Administration and implementation.

This chapter shall be applicable to all employees to the extent of and according to this chapter, except as otherwise provided by ordinance. Responsibility and authority for the implementation and administration of this chapter is vested in the City Manager, notwithstanding any other section of this chapter.

Wherever the male gender is used in this section, it shall be construed to include male and female employees. (Ord. 916 (part), 2003)

2.56.050 City Manager—Authority and responsibility.

Subject to applicable State law, charter provisions, ordinances and resolutions for regulations and policies of the City Commission, the City Manager has and retains all rights to administer the affairs of the City, either personally or through his or her subordinates. For the purpose of this chapter, these rights include but are not limited to the right to:

A. Hire, promote, reclassify, transfer, assign, lay off and recall employees to work;

B. Reprimand, suspend, demote, discharge, or otherwise discipline employees;

C. Judge the employee's skill, ability and efficiency, and general performance;

D. Determine the starting and quitting times and the number of hours to be worked;

E. Determine the assignment of work and the size and composition of the work force;

F. Revise, eliminate, combine or establish new jobs and classifications;

G. Establish, close down, or expand the operation of any facility, department or division and reduce, increase, alter, reorganize, combine, transfer or cease any department's operation, equipment or service;

H. Subcontract and determine the services to be rendered, bought or sold;

I. Introduce technological changes; new, improved or modified services, methods, techniques and equipment; and otherwise generally manage the operation and direct the work force. (Ord. 916 (part), 2003)

2.56.060 Amendment.

Amendments to this chapter may be proposed by the City Manager to the City Commission as required. All amendments shall be adopted by ordinance and shall become effective upon adoption by the City Commission or on such date as the City Commission designates. (Ord. 916 (part), 2003)

2.56.070 Administrative procedures and regulations.

The City Manager, at any time deemed by him or her to be necessary or proper for the purpose of enforcement or implementation, may him or herself or may by his or her authorization and through his or her designee adopt, amend or rescind written administrative procedures or regulations consistent with this chapter. Such procedures or regulations shall be effective on the dates specified by the City Manager and shall be placed on record in the personnel office, together with this chapter, to be open to public inspection during normal working hours. These administrative regulations shall also be distributed to management personnel in all departments and shall be posted on bulletin boards, for a minimum of thirty (30) days. (Ord. 916 (part), 2003)

2.56.080 Equal employment opportunity.

A. It has been and will continue to be a fundamental policy of the City not to unfairly discriminate against individuals on the basis of race, color, religion, sex, sexual orientation, national origin, age, physical or mental handicap or disability, serious medical condition, or status as a military veteran with respect to recruitment, hiring, discipline, training and promotion. Further, it is the policy of the City to comply with the concepts and practices of affirmative action.

B. Effective implementation and continuing administration of this policy will be the direct responsibility of the City Manager or the City Manager's designee. The City Manager or designee serves as affirmative action administrator with responsibilities to maintain and implement the affirmative action plan and to ensure that the coordination, direction, and review of equal employment opportunity policies, practices, and programs is accomplished.

C. All supervisory personnel should make special efforts to ensure that all employees reporting to them understand and effectively implement the policy.

D. The City does not condone and will not tolerate the harassment of any employee. In addition, it is a violation of City policy for any employee to engage in sexual or any other form of employee harassment. Complaints of harassment of any type, including sexual harassment, should be brought to the attention of the City Manager or the Personnel Director.

E. Further, all complaints of discriminatory treatment in violation of this policy should be brought to the attention of the City Manager or the Personnel Director.

F. Complaints of harassment or discriminatory treatment should be brought forward as promptly as reasonably possible after the alleged harassment or discriminatory treatment occurs. A prompt investigation will be conducted in as confidential manner as possible.

G. Any person reporting harassment or discriminatory treatment or participating in an investigation of harassment or discriminatory treatment shall not be subject to retaliatory action.

H. It is the responsibility of each and every employee of the City to give this policy of equal employment opportunity real meaning and full support. (Ord. 916 (part), 2003)

Article 2 Classification

2.56.200 Identification—Consistency in pay ranges—Approval of plan.

Each position within the City shall be classified and shall be identified by a class specification and class title, and all positions within a classification shall be subject to the same pay range through the annual budget process. (Ord. 916 (part), 2003)

2.56.210 New positions—Classification required before filling.

No person shall be employed by the City to fill a position with any classification or pay range not included in the classification plan. (Ord. 916 (part), 2003)

2.56.220 Maintenance of plan.

The City Manager shall periodically instruct the Personnel Director to review the duties and responsibilities of positions within the City. (Ord. 916 (part), 2003)

2.56.230 Reclassification.

Reclassification shall be conducted according to the procedures set forth in administrative regulation. (Ord. 916 (part), 2003)

Article 3 Pay

2.56.300 Pay plan review—Recommendation.

The City Manager may periodically instruct the Personnel Director to review and propose a compensation plan which considers both salary and benefit levels, for job classifications within the classification plan. The pay plan shall be recommended by

the City Manager to the City Commission. (Ord. 916 (part), 2003)

2.56.310 Employees paid according to classification and pay plans—City Manager's authority.

All employees shall be paid in accordance with the approved pay and classification plans. The City Manager shall have the final authority with respect to the assignment or change in assignment to rates within the approved pay and classification plans. (Ord. 916 (part), 2003)

2.56.320 Rate at appointment—Increases.

Upon original appointment, all persons employed by the City shall be paid at the minimum rate for the classification. However, the City Manager may authorize original appointments at higher than the minimum rate within the designated pay range if the employee demonstrates exceptional experience, and training, or to accommodate market conditions. If hired at higher than the minimum rate, such employee shall be eligible for salary increases in accordance with the approved pay plan. (Ord. 916 (part), 2003)

2.56.330 Raises upon promotion.

An employee shall, upon promotion, receive an increase in pay consistent with the approved pay plan. (Ord. 916 (part), 2003)

2.56.340 Demotion.

When an employee is demoted for disciplinary reasons to a position having a lower classification level, the employee shall receive a salary decrease. The decrease shall be within the pay range of the lower level position. If an employee receives a demotion for non-disciplinary reasons, the rate of pay may equal the rate of pay received prior to the demotion, provided the rate of pay is in the pay range of the lower level position. (Ord. 916 (part), 2003)

2.56.350 Transfer.

When an employee is transferred within the same pay grade, the rate of pay shall remain the same. (Ord. 916 (part), 2003)

2.56.360 Reclassification.

A. When an employee's position is reclassified to a higher level classification or when a classification is assigned to a higher salary range, no reduction in the base pay rate will result. The employee shall receive at least the minimum rate of pay in the new range or a rate of pay higher than the minimum rate of pay within the designated range based upon the recommendations of the Personnel Director and the approval of the City Manager.

B. When an employee's position is reclassified to a lower level classification or when a classification is assigned to a lower salary range, the affected employee shall be permitted to continue at his or her present rate of pay. The employee shall not be eligible for salary increases until the salary range encompasses the incumbent's pay rate.

C. An employee's performance review date does not change as a result of a reclassification. (Ord. 916 (part), 2003)

2.56.370 Termination.

If an employee is dismissed, the final check shall be issued within five (5) calendar days pursuant to applicable law. If an employee resigns, the final check is due and payable the next regular payday. (Ord. 916 (part), 2003)

Article 4 Hours of Work and Overtime

2.56.400 Hours of work.

An employee's normal work schedule may vary and is determined by the respective department head. The standard workweek shall equal forty (40) hours for all employees, regardless of their particular work schedule, unless otherwise designated by the City Commission. The standard workweek shall begin Sunday at midnight and end on Saturday at 11:59 p.m. (Ord. 916 (part), 2003)

2.56.410 Overtime—Eligibility for non-exempt positions.

Any non-exempt or hourly employee who works time in excess of the standard workweek shall be compensated for overtime. Compensation may be in the form of pay or compensatory time off consistent with the provisions of the Fair Labor Standards Act and the applicable administrative regulation. Overtime shall be compensated at one and one-half ($1^1/_2$) times the regular hourly rate. (Ord. 916 (part), 2003)

2.56.420 Overtime—Scheduling.

Overtime shall be authorized only by a department head. Overtime may be assigned and required in consideration of work requirements and resource availability. (Ord. 916 (part), 2003)

2.56.430 Computation of overtime.

A. Extended Duty. For overtime extending beyond the normal work period when the employee does not leave the work site, pursuant to administrative regulation, eligible employees will be compensated overtime based on quarter-hour increments, depending on the time worked.

B. Callback Pay. When a non-exempt employee is called back for unscheduled work after having left the work site, all work performed shall be compensated at the applicable rate.

C. Court Appearances. When any non-exempt employee is called to testify in a court case and the basis of his or her testimony is related to the performance of his or her job duties, he or she shall be eligible for court appearance pay. Court appearance pay shall be granted only when the hearing is scheduled outside of the employee's regular work schedule. This provision does not apply to employee plaintiffs in actions against the City.

D. Part-time Employees. Overtime shall be compensated to part-time employees whenever their total hours worked is in excess of forty (40) hours per week.

E. Effect of Paid Leave. No paid holiday, paid time off, or compensatory time used shall be counted as working time in determining eligibility for overtime.

F. Training. When training is required by the City for an employee, an effort will be made to arrange for the training during an employee's regularly scheduled work hours. However, a department head may change an employee's normal work hours to accommodate the training schedule. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.440 Positions ineligible for overtime—Compensatory absences.

Employees in exempt positions, as defined by the Fair Labor Standards Act, are expected to work, without direct compensation, in excess of the standard workday or workweek to complete job duties. Exempt employees shall not be eligible to receive overtime for such time worked; moreover, any such time shall not be compensable in wages or salaries, nor shall it be accumulated. If, however, an

exempt employee works an excessive amount of time beyond the standard workweek, the department head may grant short administrative absences. The granting of such absences, including the time allowed for and the scheduling of these absences, shall be strictly discretionary with the department head. (Ord. 916 (part), 2003)

2.56.450 Work breaks.

Under this chapter, the department head may provide for work breaks during the working day. No more than two (2) such breaks shall be granted, not to exceed fifteen (15) minutes each, including related travel time. Work breaks shall not be considered to accumulate if they are not taken and shall not be used to shorten the normal workday. The granting of such breaks shall depend on the constraints of working conditions within each department. Regulations regarding such breaks shall be set forth by the department head. (Ord. 916 (part), 2003)

Article 5 Appointment

2.56.500 Recruitment and application process.

A. Announcement of Vacancies. Under this chapter, the personnel office shall prepare job announcements using such publicity as deemed appropriate to reach prospective applicants for the position to be filled. All job announcements and other publicity material concerning position vacancies shall explicitly state that the City is an equal opportunity employer.

B. Area for Consideration. Individuals shall be recruited from a geographic area sufficiently broad to ensure the selection of well-qualified candidates for the position.

C. Application. Every person wishing to apply for employment with the City must complete a City of Hobbs job application form and submit the form to the Personnel Division. If a resume is submitted for a position, the person shall complete an application form prior to being considered for the position. Such form shall provide information concerning training, experience, references and such other data as deemed necessary.

D. Disqualification of Applicants. Applicants may be disqualified for consideration for employment when any of the following factors exist:

1. The applicant does not possess the minimum qualifications for the job.

2. The applicant is not physically or mentally fit to perform the duties of the job.
3. The applicant has demonstrated an unsatisfactory employment record or personal record as evidenced by the results of a reference check.
4. The applicant refuses to sign an affidavit allowing a background investigation.
5. The applicant has given false information in his or her application, practiced deception during the selection process or does not complete the application.
6. The applicant failed to pass selection procedures as administered by the City.
7. The applicant is suspended from employment or is otherwise under disciplinary sanction, by his or her current employer, including the City.

E. Discrimination. No applicant should be unfairly disqualified because of age, race, color, religion, national origin, sex, sexual orientation, physical or mental disability, serious medical condition or veteran status. (Ord. 916 (part), 2003)

2.56.510 Nature and types of examinations.

A. Selection Techniques. For the purpose of this chapter, the selection techniques used in the examination process shall be objective, of a practical nature, and shall relate to those factors which, upon the review of the Personnel Director, in consultation with the department head, can reasonably be expected to measure the relative capabilities of the persons examined in their ability to execute the duties and responsibilities of the position to which they seek to be appointed. Examinations shall consist of selection techniques which will fairly assess the qualifications of candidates, such as, but not necessarily limited to, achievement and aptitude tests, other written tests, personal interview, oral Boards, assessment centers, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests, or any combination of these or other tests.

B. Open Competitive Examination. Open competitive examinations will be given for all positions to be filled in the municipal service unless the needs of the service require a promotional examination as set forth in subsection C of this section. When internal candidates and outside candidates have equal qualifications and examination scores, preference will be given to the internal candidate, provided that the outside candidate is not from an affected group identified in the EEO plan or related documents.

C. Promotional Examination. Whenever an adequate number of qualified candidates are available within the City without the necessity of outside recruitment, as determined by the Personnel Director and the respective department head, a promotional examination may be utilized. The department head must approve any promotional examination held as a means of establishing qualified employees for promotion to fill existing or future vacancies. Promotional examination may include any of the selection techniques mentioned in this section, or any combination of them. Promotional examinations may be conducted on a City, department, or divisional basis. Only those employed at the time of application who meet the requirements set forth in the promotional announcements may compete in promotional examinations. (Ord. 916 (part), 2003)

2.56.520 Employment lists.

A. Creation of Lists. After the completion of an examination and selection process, the Personnel Director, upon request from the department head, may establish an employment list as a means of recommending qualified individuals to fill existing or future vacancies. Employment lists shall be of two (2) types:

1. Open competitive employment lists result from selection processes in which both internal and external applicants are eligible to participate. These lists shall include the names of all persons who have successfully completed a class or position examination that was announced as an open competitive examination.

2. Promotion employment lists result from selection processes in which only internal applicants are eligible to participate. These lists shall include the names of those employees who have successfully completed a promotional examination for a position or a class of work. Such lists may be used in conjunction with other recruitment procedures at the discretion of the Personnel Director. Placement on an employment list shall in no way entitle an applicant or candidate to appointment to any position.

B. Duration of Lists. Employment lists may remain in effect for up to one (1) year.

C. Rule of Three. The hiring supervisor shall have the right to invoke the rule of three (3) when hiring from an established list. For purposes of this section, the rule of three (3) is defined as follows: In the case of one (1) vacancy, the top three (3) scoring candidates on an established list are eligible for appointment. For each additional vacancy, one (1) additional candidate may be eligible for appointment.

D. Reemployment Lists. The names of regular employees who have been laid off shall be placed on appropriate reemployment lists for twelve (12) months in order of total continuous time served in probationary and regular status.

E. Removal of Names From List. The name of any person appearing on an employment or reemployment list shall be removed by the Personnel Director if the eligible person requests in writing that his or her name be removed, if he or she fails to respond to a notice of appointment mailed to his or her last known address, or when the list expires, as specified in this chapter. The names of persons on promotional employment lists who resign shall automatically be dropped from such lists.

F. Waivers. Eligible applicants may waive their right to appointment without suffering any loss of status on the employment list by so doing. However, when a candidate has waived appointment two (2) times, his or her name shall automatically be dropped from such list. (Ord. 916 (part), 2003)

2.56.530 Job vacancies.

A. Notice to Personnel Director. Under this chapter, whenever a vacancy is to be filled, notification shall be given to the Personnel Director. If there is no reemployment list available for the class, the City Manager, upon recommendation of the department head, shall have the right to decide whether to fill the vacancy by transfer, appointment from a promotional employment list, appointment from an open employment list, or a combination of these categories.

B. Appointment. All persons shall be selected on the basis of job related criteria. No person shall be selected for employment without the approval of the department head and the authorization of the City Manager. (Ord. 916 (part), 2003)

2.56.540 Types of appointment—Status.

A. Regular Appointment. Any employee who is appointed to a regular position shall receive all leave and benefits in proportion to hours worked and shall be entitled to rights of grievance and appeal except during the probationary period. A regular appointment may be full-time or part-time. Regular appointments that are part-time shall receive benefits in proportion to hours worked, pursuant to administrative regulation.

B. Temporary Appointment.

1. Any employee who is appointed to a temporary position shall not receive leave and benefits, except those required by law, and shall not be entitled to

rights of grievance and appeal. The services of a temporary employee may be terminated without cause. A temporary appointment may be full-time or part-time.

2. If a temporary employee is appointed to a regular position, the employee's performance review date shall be established as the effective date of the regular appointment.

C. Acting Appointment. For the good of the service or for a temporary job vacancy or for the purposes of providing training, the City Manager may assign an employee to a different job classification. Assignment of acting status shall entitle the employee to the salary associated with that job classification for the duration of the assignment, provided such salary is equal to or higher than an employee's current pay rate. The City Manager may not assign an employee to acting status for a period of less than one (1) calendar month of duty or more than six (6) calendar months.

D. Seasonal Appointment. The City Manager may authorize temporary appointments without examination to positions which are typically seasonal or non-regular in nature. Such appointments shall be made only to temporary positions. Persons appointed for seasonal employment must meet the minimum age requirements and employment standards of the class to which appointed.

E. Interim Appointment. The City Manager may appoint an outside applicant without examination on an interim basis for a period not to exceed six (6) months to a position that has been vacated temporarily. Persons appointed on an interim basis must meet the minimum training and experience qualifications for the class in which employed. (Ord. 916 (part), 2003)

2.56.550 Probationary period.

A. All employees shall be subject to an initial one-year probationary period. Members of the police and fire certified service shall serve a probationary period beginning at the date of hire or appointment to the police or fire certified service and ending one (1) year after hire or appointment to the police or fire certified service, or, for police certified service, two thousand eighty (2,080) field hours as a New Mexico Certified Officer, regardless of any previous City employment.

B. Any approved leave without pay or workers compensation leave in excess of two (2) weeks that is taken during the probationary period will extend an employee's probationary status proportionately.

C. The probationary period shall be considered a trial employment period during which the department head shall determine the employee's suitability for the position he or she occupies as the final step in the selection process.

D. If at any time prior to the end of the probationary period the department head determines that the employee is not suitable for the position, the department head may recommend immediate termination of employment to be approved by the City Manager, whose decision is final. Probationary employees serve at the will of the City Manager and may be terminated without cause.

E. Any employee who has not successfully completed the probationary period shall not be entitled to rights of grievance or appeal as defined by this chapter.

F. An employee shall not be subject to a probationary period except upon original appointment or except as defined in subsection A of this section and Section 2.56.600. (Ord. 916 (part), 2003)

2.56.560 Performance review.

A. After the successful completion of the probationary period, each employee shall have their performance reviewed every twelve (12) months or at such other times consistent with approved pay plan.

B. If the employee disagrees with the immediate supervisor's review, the employee shall file in writing, within ten (10) calendar days, a request with the next level of supervision to review the immediate supervisor's evaluation. This process may continue at the employee's request up the chain of command until the department head has reviewed the matter. The conclusion of the department head will be deemed final and unappealable with regard to that evaluation. If the employee fails to meet the time limits imposed, the process will end and the employee will lose any rights that have not already been exercised in regard to the evaluation. At any step in this progression up the chain of command, the employee may stop the process and prepare a written response to the evaluation. That response will be retained in the employee's personnel file, together with the original evaluation. (Ord. 916 (part), 2003)

2.56.570 Medical examination.

Any candidate recommended for appointment to a full-time or part-time City position may be required to undergo a City-funded medical examination, drug and/or alcohol screen and, for member of the police or fire certified service, a psychological examination by a City-designated physician. Any examination shall

be after a conditional offer of employment and prior to appointment in order to determine whether the applicant is capable of satisfactorily performing the essential functions of the specific position, with or without reasonable accommodation.

The City Manager may at any time also require a physical or mental examination of any employee, to be funded by the City and performed by a City-designated physician or other appropriate professional, to certify that the employee is capable of satisfactorily performing the essential functions of the position. An employee may be placed on administrative leave with pay pending the examination results.

In addition to or in lieu of an examination, an employee may also be required to submit medical information to the City's medical advisor. (Ord. 916 (part), 2003)

2.56.580 Nepotism.

A. It is vital to the public image of the City to avoid the practice or appearance of nepotism in employment. In carrying out this policy, the following rules shall apply without exception:

1. No relative shall be hired in any capacity if related to the City Commissioners, the mayor, or the City Manager by blood or marriage to the third degree of kindred. The third degree of kindred includes spouses, parents, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, aunts, uncles, nieces and nephews.

2. No person shall be hired, promoted, or transferred to a position which is under the direct supervision or the departmental chain of command of a relative, in this case meaning a blood or marriage relation to the third degree of kindred, as defined in subsection (A)(1) of this section.

3. If two (2) employees are in positions of direct or indirect supervision through any departmental chain of command and these two (2) employees establish a relationship by marriage, other operation of law, or through lifestyle accommodations being the substantial equivalent of a family relationship, the City Manager may transfer one (1) of the employees to a position removed from the supervisory control of the other if it is determined that such transfer will serve the best interests of the City.

4. Except as provided in subsections (A)(1) and (A)(2) of this section, no applicant or employee who is a relative of another City employee shall be prohibited from seeking and holding a City position or from promotion within

the municipal service, provided such recruitment or promotion is conducted in accordance with this chapter and any applicable administrative regulations.

B. Supervisors will not knowingly allow these nepotism provisions to be compromised and have an affirmative obligation to report any violations to their department head. (Ord. 916 (part), 2003)

Article 6 Changes in Employment Status

2.56.600 Transfer and promotion.

A. When a job vacancy is announced, any employee may apply for transfer or promotion to the position, provided the employee is not suspended from employment or otherwise under an ongoing disciplinary sanction at the time of the application. All such qualified applicants will be considered, although no employee is assured of selection. Employees will be promoted or transferred when all other qualification and selection results are equal. If the employee successfully applies for transfer or promotion during his or her probationary period, the employee shall commence a new and separate probationary period in the new position.

B. The City Manager may, for the good of the service, transfer an employee within a department or division or to a different division or department in the City, without loss in pay. (Ord. 916 (part), 2003)

2.56.610 Demotion.

A department head may recommend an employee be demoted to a lower classification and pay subject to the rules set forth in Section 2.56.700. (Ord. 916 (part), 2003)

2.56.620 Layoffs.

A. If the City Commission determines that one (1) or more divisions or functions of the City should be privatized or eliminated, employees in the affected divisions or functions shall be subject to any agreements negotiated at the time of the privatization or elimination, and the remainder of this section should not apply in such situations.

B. The City Manager may, for the good of the service, reduce the work force and lay off employees, other than those affected by a privatization or elimination effort as defined in subsection A of this section. Within each division the order of layoff

shall be determined by the following considerations: job performance, as documented in the personnel file; suitability for the position; seniority within each classification of the work unit; seniority within the department; and seniority within the City.

C. All laid off employees shall receive an additional two (2) weeks' salary with their final paycheck. All regular full-time employees laid off within a division shall be placed on a reemployment list for one (1) year and shall be returned to work if a vacancy exists within the division in reverse order of layoff, provided the employee is qualified to perform the job to be filled. Any employee so reemployed shall retain rates of accrual based upon previous seniority and leave balances which were not paid at time of lay off shall be reinstated. (Ord. 916 (part), 2003)

2.56.630 Disability—Termination of employee.

The City Manager may terminate an employee due to a disability, mental or physical, which prohibits performance of the essential functions of the job, with or without reasonable accommodation. Rules and procedures governing disability leave are set forth in Sections 2.56.875 through 2.56.905 in conformance with all applicable laws. (Ord. 916 (part), 2003)

2.56.640 Dismissal—Grounds.

An employee may be dismissed, for cause, from the employ of the City subject to the rules set forth in Section 2.56.760. (Ord. 916 (part), 2003)

2.56.650 Resignation.

Resignation means an employee's voluntary termination of employment. Employees who fail to report to work for three (3) workdays; or three (3) regularly scheduled shifts (Police) or two (2) consecutive regularly scheduled shifts (Fire) are considered to have voluntarily resigned their position. (Ord. 916 (part), 2003)

Article 7 Disciplinary Actions

2.56.700 Just cause discipline.

Disciplinary actions for regular employees, full and part-time are based on just cause in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, age, religion, color, national origin, sex, sexual orientation, physical or mental

disability or serious medical condition, or any nonmerit factor. No employee shall be disciplined for refusing to perform an unlawful act. (Ord. 916 (part), 2003)

2.56.705 Definition of just cause.

Just cause is defined as any conduct, action or inaction arising from, or directly connected with the employee's work, which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes, but is not limited to: inefficiency; incompetence; theft; misconduct; negligence; insubordination; violation of City policy or procedure; unauthorized use of City funds, property, facilities, and materials; disruptive behavior; repeated tardiness and excessive absences; unsatisfactory work performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems; or for causes as described in the Criminal Offender Employment Act, N.M.S.A. 1978, § 28-2-1, et seq. (Ord. 916 (part), 2003)

2.56.710 Disciplinary action.

Any department head may take disciplinary action against an employee pursuant to the department head's authority and consistent with departmental policies and the ordinance codified in this chapter. Copies of any documented disciplinary action shall be furnished to the personnel office for placement in the employee's file with the signature of the recipient acknowledging receipt of the action. (Ord. 916 (part), 2003)

2.56.715 Grounds.

A. Regular employees subject to this chapter or any administrative or departmental regulations duly promulgated may be disciplined for cause. Cause for disciplinary action includes but is not limited to the following:

1. Work performance that continues to be unsatisfactory after reasonable attempts to correct performance;
2. Misconduct on the job; conduct or language toward the public or toward employees which discredits the public service;
3. Negligence in the performance of duty, including negligence in the operation of City vehicles or equipment or failure to adhere to established safety rules and procedures;
4. Incompetence or inefficiency; failure to perform job duties adequately;

5. Insubordination; failure to comply with the lawful orders of a supervisor, including refusal to work overtime;
6. Unauthorized absence from work including tardiness;
7. Consumption, possession or distribution of alcohol or drugs on the job or reporting to work under the influence of alcohol or drugs;
8. Acceptance of money, gifts, privileges, or other valuable consideration which was given with the expectation of influencing the employee in the performance of his or her duties;
9. Use of official position or authority for personal profit or advantage;
10. Misuse, theft, or destruction of City property;
11. Unauthorized disclosure of confidential information from City records or documents, as set forth by applicable State laws; falsification, destruction or unauthorized use of City records, reports, or other data belonging to the City including City employment application, or any other document used in the employment process;
12. Unauthorized or fraudulent manipulation of time records or other City records;
13. For causes as defined in the Criminal Offender Employment Act, N.M.S.A. 1978, § 28-2-1, et seq.;
14. Violation of City or departmental rules or policies or a professional code of ethics accepted by those in the same profession as the employee;
15. Noncooperation by an employee with fellow employees or other personal conduct which substantially interferes with the performance of his or her or another employee's work;
16. Misuse of leave; the claim under false or misleading pretenses.
17. Distribution of literature, vending, or soliciting or collecting contributions on City time and in public areas or voluntary cooperation with parties doing such without prior authorization of the City Manager;
18. Violation of any Federal or State law pertaining to employment, including all civil right statutes;
19. Failure to adhere to the established work schedule; failure to obtain authorization for overtime prior to overtime worked as established by general written department policy;

20. Failure to meet or maintain established job qualifications, as set forth in the job description, including maintaining a valid drivers license;
21. Other acts or omissions that adversely affect the welfare of citizens, other employees or the effective operation of the City;
22. Unauthorized possession of a weapon on the job site;
23. Fighting and/or disruptive behavior in the workplace.

B. These examples are in no way intended to provide an exhaustive listing of the reasons for which an employee may be disciplined. (Ord. 916 (part), 2003) (Ord. No. 1058, 1-7-2013)

2.56.720 Off duty conduct.

Off-duty conduct may be cause for discipline if it diminishes the integrity of the City's service. (Ord. 916 (part), 2003)

2.56.725 Progressive discipline.

A regular employee shall be progressively disciplined for unsatisfactory work performance whenever practical. Each case of inadequate performance or act of misconduct shall be judged individually. The step of corrective action used will depend on the severity of the infraction and the employee's previous work record. Under certain circumstances suspension without pay, demotion or dismissal may be the appropriate initial disciplinary action. (Ord. 916 (part), 2003)

2.56.730 Types of action permitted.

Consistent with the type and severity of cause for disciplinary action, the disciplinary authorities may take the actions set forth in Sections 2.56.735 through 2.56.760. (Ord. 916 (part), 2003)

2.56.735 Verbal counseling.

Verbal counseling is used for minor infractions such as informing the employee that his or her actions, behavior or conduct needs to change. Supervisors shall keep written notations of verbal reprimands. (Ord. 916 (part), 2003)

2.56.740 Written reprimand.

A supervisor may reprimand an employee in writing for cause. The written reprimand shall be submitted to the employee. A copy of the written reprimand shall be kept in the personnel file. The employee may respond in writing to the written

reprimand. The employee's written response will be kept in the personnel file. (Ord. 916 (part), 2003)

2.56.745 Suspension.

A. Upon review by the Personnel Director of the facts, a department head may suspend an employee* for cause without pay for a period of not more than one hundred twenty (120) hours.

B. All nonprobationary employees shall be offered the opportunity to attend a meeting prior to any proposed suspension without pay. The pre-suspension meeting shall be conducted by the department head, or designee, with only the department head, or designee, and the employee present. At this meeting the employee shall have the proposed disciplinary action and the related grounds explained and shall be given the opportunity to respond. An employee may waive his or her rights to a pre-suspension meeting by providing a written statement to that effect.

C. The department head shall submit findings and recommended action to the employee. A copy of the findings and recommended action shall be placed in the employee's personnel file. (Ord. 916 (part), 2003)

Note—*Exempt employee's suspensions will be pursuant to the Fair Labor Standards Act.

2.56.750 Demotion.

A. A department head may request that an employee be demoted for cause to a lower classification, pursuant to the meeting requirements of subsection 2.56.745(B). The cause for such a demotion shall be documented in writing and shall be submitted to the employee, together with notice of the scheduling of the pre-demotion meeting. An employee may waive his or her rights to a pre-demotion meeting by providing a written statement to that effect.

B. The pre-demotion meeting shall be conducted by the department head with only the department head, a representative of the personnel division, and the employee present.

C. The department head shall submit findings and recommended action to the employee. A copy of the findings and recommended action shall be placed in the employee's personnel file. (Ord. 916 (part), 2003)

2.56.755 Procedure for filing and hearing—Further appeal of suspension or demotion only.

A. Upon written notification of suspension or demotion the employee may appeal the decision to the City Manager. The appeal of a suspension or demotion must be submitted in writing to the Personnel Director within ten (10) calendar days of the written notification of the suspension or demotion. The appeal shall be a written statement explaining the reasons for the appeal in detail and setting forth therein the action desired. The City Manager may, at his or her discretion, elect to hold a hearing or hear additional evidence as he or she sees fit. The City Manager shall render a timely decision and reserves the right to modify the penalty imposed. The decision of the City Manager shall be final with no additional appeals permitted.

B. An employee may represent himself or herself in the appeal process or may choose to be represented by another person. (Ord. 916 (part), 2003)

2.56.760 Dismissal.

A. A department head may recommend that an employee be dismissed for cause. The cause for such dismissal shall be documented in writing and shall be submitted to the employee, together with a notice of the scheduling of the pre-termination meeting. An employee may waive his or her rights to a pre-termination meeting by providing a written statement to that effect.

B. The pre-termination meeting shall be conducted by the department head with only the department head, a representative of the personnel division, and the employee present.

C. The department head shall submit findings and recommended action to the City Manager. A copy of the findings and recommended action shall be placed in the employee's personnel file. the City Manager shall review these findings and recommendations and shall:

1. Dismiss the employee, or

2. Take other appropriate action. (Ord. 916 (part), 2003)

2.56.765 Procedure for filing and hearing—Further appeal of dismissal only.

A. Upon written notification of dismissal, either the employee or the department head may appeal the decision. The appeal of a dismissal must be submitted in writing to the Personnel Director within ten (10) calendar days of the written

notification of the City Manager's ruling of dismissal after a pre-termination meeting. The appeal shall be a written statement explaining the reasons for the appeal in detail and setting forth the action desired.

B. In the appeal of a dismissal, the City Manager shall appoint a hearing officer to hear the appeal. The hearing officer must be familiar with public or private personnel systems, or have pertinent experience in the appropriate areas of management or law. The hearing officer cannot be an employee or former employee or former or current elected official of the City of Hobbs.

C. A representative of the personnel division shall schedule the hearing of the appeal within a reasonable time. The assigned hearing officer will review the recommendation resulting from the pre-termination meeting and hold a full due process hearing. Upon hearing the appeal as presented by both parties and upon making a record of the hearing, the hearing officer shall transmit a decision in writing to the employee and the department head within twenty-one (21) calendar days of the conclusion of the hearing. The hearing officer shall render a timely decision which will either confirm or reject the termination action taken by the City Manager. The decision of the hearing officer shall be final.

D. An employee may represent himself or herself in the appeal process or may choose to be represented by another person. (Ord. 916 (part), 2003)

2.56.770 Failure to follow procedure—Representation.

If the employee fails to abide by any part of the appeal procedure as outlined in Section 2.56.755 or 2.56.765, the employee shall be conclusively deemed to have waived and abandoned the appeal. Time limits may be extended by the mutual, written consent of the employee and the Personnel Director.

If the employee, or the employee's representative, fails to appear at the appeal hearing or fails to submit written statements in lieu of appearance, the employee shall be conclusively deemed to have waived and abandoned the appeal. (Ord. 916 (part), 2003)

2.56.775 Notice of meeting for suspensions, demotions and dismissals.

If the employee is not readily available for personal delivery of the notice of the meeting or at the work site, the notice of the meeting shall be mailed via certified mail to the employee at the last known address in the employee's personnel file. (Ord. 916 (part), 2003)

2.56.780 Department heads exempt from grievance or appeal rights.

Department heads serve at the pleasure of the City Manager and shall not be entitled to rights of grievance and appeal as set forth in this chapter. (Ord. 916 (part), 2003)

Article 8. Leaves and Benefits

2.56.800 Paid holidays designated.

A. Paid Holidays. The following shall be paid holidays for all employees:

1. New Year's Day, January 1st;
2. Martin Luther King Day, third Monday in January;
3. Presidents' Day, third Monday in February;
4. Memorial Day, last Monday in May;
5. Independence Day, July 4th;
6. Labor Day, first Monday in September;
7. Veteran's Day, November 11th;
8. One-half (1/2) day immediately preceding Thanksgiving Day;
9. Thanksgiving Day, fourth Thursday in November;
10. Day after Thanksgiving Day, Friday after Thanksgiving;
11. One-half (1/2) day immediately preceding the date of observance for Christmas Day;
12. Christmas Day, December 25th.

B. Holidays Falling on Weekends. Any official City holiday that falls on a Saturday will be observed on the preceding Friday. A holiday falling on Sunday will be observed on the following Monday. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.805 Certain employees excepted from paid holidays.

All regular employees on a pay status receiving any pay on the scheduled workday immediately prior to and immediately after the holiday shall be accorded holiday leave as listed in Section 2.56.800.

An employee who is absent without approval on the workday preceding or following a holiday shall not be paid for the holiday. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.810 Additional compensation for work on paid holidays.

Any employee who works during a designated city holiday shall be paid eight (8) hours for general employees and police shift employees and 11.36 hours for fire shift employees his/her normal rate of pay during the specific holiday. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.815 Holidays during paid time off.

Holidays that occur during an employee's absence due to paid time off shall not be counted as paid time off, but as holiday leave. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.[816] Paid time off.

All employees shall accrue paid time off beginning January 20, 2013, instead of vacation time and sick leave, as fully set forth herein.
(Ord. No. 1058, 1-7-2013)

2.56.[816.1] Transition from vacation and sick leave to paid time off.

On January 20, 2013, all current employees transitioning to paid time off shall be entitled to a certain value in their existing vacation and sick leave. All unused vacation leave shall convert to paid time off, hour for hour, subject to paid time off caps. Every employee with sick leave shall receive credit for fifty (50) percent of accrued sick leave (sick leave credit). One-half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) shall be converted to paid time off, hour for hour, subject to paid time off caps. One-half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) may be cashed in at the employee's regular hourly pay rate (cash value), subject to all applicable income tax withholding requirements. An employee may utilize his/her cash value to fund his/her existing deferred compensation, subject to all applicable tax regulations. In the alternative, an employee may elect to convert his/her cash value to additional paid time off, hour for hour, subject to applicable paid time off caps.
(Ord. No. 1058, 1-7-2013)

2.56.[816.1] Transition from vacation and sick leave to paid time off.

On January 20, 2013, all current employees transitioning to paid time off shall be entitled to a certain value in their existing vacation and sick leave. All unused vacation leave shall convert to paid time off, hour for hour, subject to paid time off caps. Every employee with sick leave shall receive credit for fifty (50) percent of accrued sick leave (sick leave credit). One-half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) shall be converted to paid time off, hour for hour, subject to paid time off caps. One-half (1/2) of the sick leave credit (twenty-five (25) percent of total sick leave) may be cashed in at the employee's regular hourly pay rate (cash value), subject to all applicable income tax withholding requirements. An employee may utilize his/her cash value to fund his/her existing deferred compensation, subject to all applicable tax regulations. In the alternative, an employee may elect to convert his/her cash value to additional paid time off, hour for hour, subject to applicable paid time off caps.
(Ord. No. 1058, 1-7-2013)

2.56.[816.2] Paid time off caps.

Paid time off cap for all general employees shall be three hundred twenty (320) hours. Paid time off cap for all fire department shift employees and police shift employees shall be four hundred fifty-six (456) hours. At the end of each calendar year, any employee who is over his/her paid time off cap shall be paid for every hour over his/her paid time off cap (cap payment), subject to applicable income tax withholding requirements.

At the time of transition, one time only, an employee may elect to utilize his/her cash value pay based upon a two hundred forty (240) hour cap for general employees and police shift employees and a three hundred forty (340) hour cap for fire shift employees. Police shift employees annually may elect to set their cap at either three hundred twenty (320) hours or four hundred fifty-six (456) hours.

In the event the City's general fund cash reserve dips below twenty (20) percent at the end of a fiscal year, the City may elect to increase paid time off caps until the following year in which the general fund cash reserve is above twenty (20) percent. Employees shall not forfeit any earned paid time off and shall continue to accrue as designated in Section 2.56.820.
(Ord. No. 1058, 1-7-2013)

2.56.[816.3] Paid time off delayed implementation.

With City Manager approval, at the City Manager's sole discretion, a current employee with a reasonable basis may delay the implementation of his/her paid

time off transition. If the delayed transition occurs before the end of 2013, the employee's sick leave credit shall be calculated at thirty-three and one-third (33 1/3) percent of total sick leave. If the delayed transition occurs after 2013 and before the end of 2014, the employee's sick leave credit shall be calculated at twenty-five (25) percent of total sick leave.
(Ord. No. 1058, 1-7-2013)

2.56.[816.4] Extension of paid time off cap.

With City Manager approval, at the City Manager's sole discretion, any employee with a reasonable basis may extend his/her paid time off cap.
(Ord. No. 1058, 1-7-2013)

2.56.[816.5] Short term and long term disability insurance for paid time off employees.

All employees who receive paid time off shall receive short-term and long-term disability insurance as part of their benefit package with the City. The City shall pay one hundred (100) percent of the premiums for the disability insurance for the fiscal years 2012-2013 and 2013-2014. After the 2013-2014 fiscal year, the premiums for short-term and long-term disability shall be determined annually and the employees may be required to cost share if the premiums increase from the fiscal year 2012-2013. The specific terms of the disability insurance shall be negotiated annually to obtain the best value for the City and the employees.
(Ord. No. 1058, 1-7-2013)

2.56.820 Rate of accumulation of paid time off.

A. Paid time off shall be granted to regular employees and police shift employees, other than fire shift employees, as follows:

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
Date of hire through 5th year	12.00 hours	18 days (144 hours)	320 hours general & 456 hours police shift employees

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
6th year through 10th year	14.00 hours	21 days (168 hours)	320 hours general & 456 hours police shift employees
11th year through 15th year	16.00 hours	24 days (192 hours)	320 hours general & 456 hours police shift employees
16th year through 20th year	18.00 hours	27 days (216 hours)	320 hours general & 456 hours police shift employees
21st year plus	20.00 hours	30 days (240 hours)	320 hours general & 456 hours police shift employees

B. Regular employees of the fire department working a shift schedule shall be granted paid time off as follows:

Years of Service	Accrual Rate Per Month	Working Days Per Year	Maximum Accrual
Date of hire through 5th year	17.04 hours	8.52 shifts (204.48 hours)	456 hours
6th year through 10th year	19.89 hours	9.95 shifts (238.68 hours)	456 hours
11th year though 15th year	22.69 hours	11.35 shifts (272.28 hours)	456 hours
16th year through 20th year	25.49 hours	12.75 shifts (306.00 hours)	456 hours
21st year plus	28.29 hours	14.15 shifts (339.60 hours)	456 hours

C. Consecutive years of service shall be based on service time earned as a regular employee eligible for benefits. Breaks in service of no greater than six (6) months shall be bridged for the purpose of calculating consecutive years of service. Breaks in service of greater than six (6) months shall not be bridged and the last hire date shall be used to calculate years of service. (Ord. 966, 2007: Ord. 916 (part), 2003)

(Ord. No. 1058, 1-7-2013; Ord. No. 1071, 12-2-2013)

2.56.825 Incremental use, scheduling of paid time off.

Paid time off may be taken in increments of not less than one-half (1/2) hour, but the employee may only take paid time off if it has been accumulated. Any paid time off must be approved by the supervisor. The department head or designee shall be the final authority in allowing the scheduling and amount of paid time off taken. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.830 Paid time off for part-time regular employees.

Part-time regular City employees working between twenty (20) to twenty-nine (29) hours weekly shall accrue fifty (50) percent of the normal rate accrued by a full-time employee and shall have a fifty (50) percent cap of a full-time employee. Part-time regular employees working thirty (30) to thirty-nine (39) hours weekly shall accrue seventy-five (75) percent of the normal rate accrued by a full-time employee and shall have a seventy-five (75) percent cap of a full-time employee. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.835 Paid time off accumulation paid upon termination.

Any paid time off accumulated by an employee but not taken at the time of termination shall be paid in full, subject to applicable income tax wage withholding requirements. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.840 Reserved.

Editor's note—Ord. No. 1058, adopted Jan. 7, 2013, repealed § 2.56.840, pertaining to sick leave, and derived from Ord. No. 916, adopted in 2003.

2.56.845 Family and medical leave policy.

Family and medical leave will be granted to eligible employees pursuant to the Family and Medical Leave Act. Should an employee have accrued paid time off, during a family and medical leave event, paid time off shall be utilized. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.850—2.56.870 Reserved.

Editor's note—Ord. No. 1058, adopted Jan. 7, 2013, repealed §§ 2.56.850—2.56.870, pertaining to sick leave, and derived from Ord. No. 916, adopted in 2003.

2.56.875 Paid time off bank.

A paid time off bank program may be developed to provide additional paid time off days to members of the bank upon exhaustion of accumulated leave balances for qualifying events. Eligibility for and use of the paid time off bank will be administered according to the procedures set forth in administrative regulation. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.880 Workers' compensation leave.

Workers' compensation leave shall be granted to any employee who sustains an injury or occupational disease in the course and scope of his or her employment with the City. Should the family/medical leave provisions apply to the use of workers' compensation leave, those provisions shall also apply. (Ord. 916 (part), 2003)

2.56.885 Workers' compensation leave amount—Conditions.

A. An employee sustaining a workers' compensation approved, on-the-job injury shall be subject to the following:

1. If the injury or occupational disease prevents an employee from returning to work, injury leave shall be granted subject to the following conditions: The first seven (7) calendar days from the day the injured employee leaves work as a result of the injury shall be accounted for as paid time off.
2. If the period of injury lasts longer than 28 calendar days from the day the injured employee leaves work as a result of the injury, injury leave shall be accounted for from the day the employee first left work, as defined in Section 2.56.890.
3. While on workers' compensation leave, an employee shall not accrue paid time off.
4. No employee shall be otherwise employed or gainfully occupied while he is on workers' compensation leave.
5. Any work-related injury which is anticipated to or does result in three (3) or more days of leave shall require the employee to promptly, or at the time of

being physically able to do so, submit a form specified by administrative regulation from the treating physician stating the cause and nature of the injury and the probable duration of disability.

B. Prior to the employee's return to work, the treating physician may be requested to submit a written report, based on the employee's current job description, to the Human Resources Director, indicating the date the employee will become able to return to his position.

C. If the employee is returning without a full release from the physician to perform the essential functions of the job, the physician's report should state what, if any, restrictions apply.

D. It shall be the decision of the department head as to whether or not to allow the employee to return to a light or restricted duty. The department head shall consider what, if any, special projects might be available in allowing a restricted or light duty assignment. However, light or restricted duty shall not extend beyond four hundred eighty (480) hours per occurrence. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.890 Reduction of workers' compensation.

A. Compensation payable under the Workers' Compensation Act shall be reduced by ten (10) percent when an injury is caused by the willful failure of the employee to use safety devices provided by the employer.

B. No compensation shall be made to any employee whose injury was caused by the intoxication of the employee or willfully suffered or intentionally inflicted by the employee.

C. No compensation shall be made to any employee whose injury was caused solely by the employee being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act, or under the influence of a narcotic drug as defined in the Controlled Substances Act unless the drug was lawfully dispensed or administered to the employee by a properly licensed practitioner. (Ord. 916 (part), 2003)

2.56.895 Injuries on job.

Any employee injured on the job shall immediately report the injury to his supervisor, who shall report the injury to the Human Resources Department. An incident report shall be completed by the supervisor and submitted to the Human

Resources Department within twenty-four (24) hours of the incident. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.900 Workers' compensation leave—Eligibility for other leaves.

A. An employee may use accrued paid time off to supplement workers' compensation leave benefits to receive his normal net salary while on workers' compensation leave until exhausted. Leave shall be deducted at the appropriate rate.

B. When paid time off is exhausted, the employee is eligible to take leave without pay. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.905 Temporary disability leave generally.

Temporary disability leave shall be governed by the terms and conditions of the family and medical leave policy. (Ord. 916 (part), 2003)

2.56.910 Administrative leave.

A. Administrative leave may be approved by the City Manager for the good of the City's service.

B. Administrative leave under this section shall not constitute discipline. During the administrative leave, the employee shall not attend his regular work site or any other city facilities, except as designated in the notice of administrative leave, but shall remain available during normal work hours to meet with the department head as requested.

C. When it comes to the attention of the City Manager that an employee has been charged with a crime which is a felony under the laws of the state wherein the charges are brought, the City Manager may, upon determining that it is in the best interests of the City in order to protect and maintain the public's confidence and trust in city government, place the employee on unpaid administrative leave pending the outcome or disposition of the criminal charges.

D. The basis for a determination to place an employee on administrative leave shall be documented in writing and shall be submitted to the employee and to the human relations director either at the time of or within twenty-four (24) hours of the commencing of the administrative leave. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.915 Court leave.

An employee shall be granted court leave when required to perform jury duty in any municipal, county, state or federal court or when required to serve as a non-party witness in any such court. Any employee so summoned shall immediately notify his supervisor at the City of the date and time of the impending required attendance. Regular employees shall receive their regular pay based on the hours they are normally scheduled to work during such time of service, provided that they pay to the City any jury duty or witness fees, excluding mileage and parking reimbursement for a personal vehicle, which they receive. Jury duty or witness fees earned during holidays or paid time off shall be retained by the employee. Any employee appearing as a plaintiff or defendant in a personal case not as a result of his capacity as an employee shall not be granted court leave, and any employee appearing as a plaintiff in an action against the City shall not be granted paid leave, unless the employee uses accrued paid time off. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.920 Funeral leave.

If a death occurs in the immediate family of a regular employee, a funeral leave with pay may be granted up to a maximum of three (3) occurrences per year and five (5) days total dependent upon need, i.e., travel distance, relationship, etc. As used in this section, the term "immediate family" shall be defined as husband or wife, child, stepchild, brother or sister, stepbrother, stepsister, parent, stepparent, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandfather, grandmother, grandfather-in-law, grandmother-in-law and grandchild. The employee may be required to provide valid proof of death upon request and shall notify the immediate supervisor prior to taking funeral leave. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.925 Military leave.

Military leave shall be allowed in accordance with applicable laws. Employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not more than fifteen (15) working days' (a working day equals an employee's normal shift, i.e., fire shift employee's day is twenty-four (24) hours) military leave with pay per federal fiscal year when they are ordered to duty for training. Unused military leave may be carried over to the following year, not to exceed a total of thirty (30) leave days in a federal fiscal year. This military leave is in addition to other leave or paid time off to

which the employee is otherwise entitled. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.930 Reserved.

Editor's note—Ord. No. 1058, adopted Jan. 7, 2013, repealed the section catchline for Section 2.56.930, "Military training leave," and combined its provisions with Section 2.56.925.

2.56.935 Unauthorized leave.

Any unapproved absence from work shall be considered unauthorized and may be subject to disciplinary action, up to and including dismissal. All unauthorized leave shall be originally recorded as leave without pay. Upon investigation of the unauthorized leave, the department head may change the leave to paid time off without losing the right to discipline the employee. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.940 Suspension of paid leave.

The City Manager shall reserve the right to postpone all paid leave for an employee in an emergency, except authorized workers' compensation leave and family and medical leave. (Ord. 916 (part), 2003)
(Ord. No. 1058, 1-7-2013)

2.56.945 Leave without pay.

For the good of the service and at the employee's request, the City Manager may grant a period of leave without pay to any regular employee for a period of time not to exceed one (1) year. (Ord. 916 (part), 2003)

Article 9 Employee Conduct

2.56.1000 Participation in political campaigns.

Employees may participate in any Federal, State, county or local political campaign, provided that such participation is conducted away from any City office or City work site and is not conducted during working hours. (Ord. 916 (part), 2003)

2.56.1010 Election to municipal office—Resignation required.

Any employee elected to municipal office in the City shall resign from the employ of the City. (Ord. 916 (part), 2003)

2.56.1020 Outside employment.

A. An employee is free to pursue any outside employment, including self-employment, provided that there is no conflict of interest, the employment does not occur during the assigned working hours of the employee, and the efficiency of the employee is maintained.

B. The employee must submit a written request to the department head and the City Manager for authorization to pursue outside employment. If, at any time, the department head and City Manager determine that an employee should not continue outside employment, the department head and the City Manager may require that such employment cease. (Ord. 916 (part), 2003)

2.56.1030 Special job requirements—Residency—Telephone at residence.

The department head may require that any incumbent in a specific City position may be required to live within a certain distance of the City facility where he or she regularly reports to work and have a telephone at his or her residence for reasons related to the emergency response or callback provisions of his or her job description. (Ord. 916 (part), 2003)

2.56.1040 Union agreements.

Any issue covered in a City collective bargaining agreement takes precedence over the same issue in this chapter. All issues not covered in such agreements shall be subject to this chapter. (Ord. 916 (part), 2003)

2.56.1050 Dress standards.

The department head may establish standards regulating dress and appearance for the respective departments for the purpose of maintaining either safety standards or a professional working environment. (Ord. 916 (part), 2003)

Article 10 Grievances

2.56.1100 Informal grievances.

The purpose of informal grievance procedures is to provide employees, in an atmosphere of courtesy and cooperation, an equitable solution to problems or complaints which may affect employees in the course of their employment with the City. When applicable, the informal grievance procedure allows employees to voice complaints concerning alleged improper actions of employees, supervisors, or

management. The informal grievance procedure does not apply to suspensions, involuntary demotions, and terminations. (Ord. 916 (part), 2003)

2.56.1120 Informal grievance procedure.

A. The following steps comprise the informal grievance procedure.

1. Meeting with Supervisor.

   a. The employee is required to contact his or her supervisor in writing within five (5) calendar days of the incident or action being grieved to discuss the same.

   b. Within five (5) working days of the completion of the meeting, the supervisor shall provide the employee with a written decision.

2. Meeting with Department Head.

   a. The employee may appeal the decision of the supervisor to the department head in writing within three (3) working days of the receipt of the supervisor's written decision.

   b. The department head shall meet with the employee within five (5) working days of receiving the grievance to discuss the grievance. The department head will provide the employee with a written decision within ten (10) workings days of the meeting.

3. Meeting with City Manager.

   a. Within three (3) workings days of receiving the department head's decision, the employee may appeal the decision to the City Manager.

   b. The employee and one (1) witness of his or her choice (if desired) and the department head shall meet with the City Manager or his or her designee to discuss the grievance within five (5) working days of receipt of the written request by the City Manager. Within ten (10) working days of the meeting, the City Manager shall advise the employee of his or her decision in writing. the City Manager's decision shall be final.

B. Time limits may be extended at the request of either party involved in subsections (A)(1), (A)(2) or (A)(3) of this section. A request for extension of time shall be made to the Personnel Director. (Ord. 916 (part), 2003)

2.56.1130 Conditions or actions not grievable.

The following are not grievable:

A. Employee complaints of discrimination or harassment based on race, color, religion, sex, sexual orientation, age, national origin, physical or mental disability or serious medical condition. These allegations should be reported directly to the City Manager or Personnel Director in compliance with the City's discrimination and harassment reporting procedures.

B. Matters where the City is without authority to act or does not have the ability to provide a remedy.

C. Dismissal of probationary employees prior to the expiration of their probationary period.

D. Release of temporary or seasonal employees prior to or at the end of their anticipated employment period.

E. Dismissal of department heads at any point during their employment with the City.

F. Reassignments, transfers, temporary assignments, removal from temporary assignments, promotions, or layoffs.

G. Performance appraisals, merit recommendations, verbal counselings, or selection for vacant positions. (Ord. 916 (part), 2003)

CHAPTER 2.58 NUMBER OF CITY OF HOBBS EMPLOYEES

2.58.001 Maximum number of City of Hobbs employees.

The number of City of Hobbs regular employees, as defined herein, should be capped at five hundred fifty (550). In the event the number of regular employees exceeds five hundred fifty (550), the City Manager shall use good faith efforts to come into cap compliance by attrition of existing regular employees, by initiating hiring freezes, and by voluntary/involuntary transfers.
(Ord. No. 1016, 8-17-2009; Ord. No. 1065, 4-15-2013; Ord. No. 1072, 5-5-2014)

2.58.002 Definition.

"Regular employee" means an employee who has been appointed to a regular position, who shall receive all leave and benefits in proportion to hours worked and who shall be entitled to rights of grievance and appeal except during the probationary period. A regular employee may be full-time or part-time.
(Ord. No. 1016, 8-17-2009; Ord. No. 1072, 5-5-2014)

Chapter 2.60 LABOR MANAGEMENT RELATIONS

2.60.010 Short title.

The ordinance codified in this chapter may be cited as the "City of Hobbs Labor Management Relations Ordinance." (Ord. 927 (part), 2004)

2.60.020 Purpose.

The purpose of this chapter is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees and to promote harmonious and cooperative relationships between the employer and the employees, and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens. (Ord. 927 (part), 2004)

2.60.030 Conflicts.

In the event of conflict with other City of Hobbs ordinances, the provisions of this chapter shall supersede other previously enacted ordinances. City of Hobbs sanctioned rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control. (Ord. 927 (part), 2004)

2.60.040 Definitions.

As used in this chapter:

"Appropriate bargaining unit" means a group of employees designated by the Board for the purpose of collective bargaining.

"Board" means the City of Hobbs Labor Management Relations Board.

"Certification" means the designation by the Board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

"Collective bargaining" means the act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment.

"Confidential employee" means a person who devotes a majority of his or her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

"Emergency" means a one-time crisis that was unforeseen and unavoidable.

"Employee" means a regular non-probationary employee of the City of Hobbs.

"Employer" means the City of Hobbs.

"Exclusive representative" means a labor organization that, as a result of certification by the Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining.

"Fair share" means the payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. Such figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including, but not limited to, all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining

unit under United States and New Mexico statutes and case law, including, but not limited to, all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing such contract, and representing all such employees in grievances and disciplinary actions.

"Governing body" means the City of Hobbs City Commission.

"Impasse" means failure of the employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

"Labor organization" means any employee organization one (1) of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting, and conferring with employers on matters pertaining to employment relations.

"Lockout" means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

"Management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis.

"Mediation" means assistance by an impartial third party to resolve an impasse in contract negotiation between the employer and an exclusive representative through interpretation, suggestion and advice.

"Professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

"Strike" means an employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence or withholding of service in whole or

in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment.

"Supervisor" means an employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of two (2) or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively. This definition does not include individuals who perform merely routine, incidental, or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who occasionally participate in peer review or evaluation of employees. (Ord. 927 (part), 2004)

2.60.050 Rights of employees.

Employees, other than management, supervisory, confidential, and probationary employees, may form, join or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint or coercion. Employees also have the right to refuse to form, join or assist any labor organization. (Ord. 927 (part), 2004)

2.60.060 Management rights.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer's rights shall include, but are not limited to, the following:

A. To direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

B. To determine qualifications for employment and the nature and content of personnel examinations;

C. To take actions as may be necessary to carry out the mission of the employer in emergencies; and

D. The employer retains all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act. (Ord. 927 (part), 2004)

2.60.070 Labor Management Relations Board created—Terms.

A. The "Labor-Management Relations Board" is hereby created. The Board shall be composed of three (3) members appointed by the Mayor and approved by the City Commission. One (1) member shall be appointed on the recommendation of individuals representing labor, one (1) member shall be appointed on the recommendation of the City Manager, and one (1) member shall be appointed on the recommendation of the first two (2) appointees.

B. Board members shall serve for a period of one (1) year with terms commencing in the month of September except in the initial appointment which will be a shorter term effective the same day as the ordinance codified in this chapter. Vacancies shall be filled in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

C. During the term of appointment, no Board member shall hold or seek any other political office or public employment or be an employee of a union or an organization representing public employees or a public employer.

D. Each Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act. (Ord. 927 (part), 2004)

2.60.080 Board—Powers and duties.

A. The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the ordinance codified in this chapter, including the establishment of procedures for:

1. The designation of appropriate bargaining units;
2. The selection, certification and decertification of exclusive representatives; and
3. The filing, hearing, and determination of complaints of prohibited practices. This does not apply to negotiation impasse or grievances subject to the required negotiated grievance process.

B. The Board shall:

1. Hold hearings and make inquiries necessary to carry out its functions and duties;
2. Request from employers and labor organizations the information and data necessary to carry out the functions and responsibilities of the Board.

C. The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relevant to the matter in question. The Board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the District Court. The Board may administer oaths and affirmations, examine witnesses and receive evidence. Subject to the approval of funds, the Board may contract with a third party to assist it in carrying out its functions.

D. The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on interpretation and applications of the ordinance codified in this chapter are final and binding on the parties subject to the appeal process provided in Section 2.60.200. The Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose by the parties as required by law.

E. The Board has the power to enforce provisions of the City of Hobbs Labor Management Relations Ordinance and the Board's Labor Management Relations Rules and Regulations through the imposition of appropriate administrative remedies.

F. The Board shall have no power to promulgate policy other than for its own operation.

G. No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the ordinance codified in this chapter to pay money to any labor organization that is certified as an exclusive representative. This issue of fair share shall be a permissive as opposed to a mandatory subject of bargaining between the employer and the exclusive representative. (Ord. 927 (part), 2004)

2.60.090 Hearing procedures.

A. The Board may hold hearings for the purposes of:

1. Information gathering and inquiry;

2. Adopting rules and regulations; and

3. Adjudicating disputes and enforcing the provisions of the ordinance codified in this chapter and rules and regulations adopted pursuant to the ordinance.

B. The Board shall adopt regulations setting forth procedures to be followed during hearings of the Board. Such regulations shall meet minimal due process requirements of the State and Federal constitution.

C. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.

D. All adopted rules and regulations shall be filed in accordance with applicable laws.

E. A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.

F. Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under the ordinance codified in this chapter.

G. No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method in which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained. All meetings shall be held at a City facility. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the City of Hobbs, and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings. (Ord. 927 (part), 2004)

2.60.100 Appropriate bargaining units.

A. The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-

professional, professional, corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by the ordinance codified in this chapter.

B. If the labor organization and the employer cannot agree on the appropriate bargaining unit within thirty (30) days, the Board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the Board.

C. The Board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial or confidential employees. (Ord. 927 (part), 2004)

2.60.110 Elections.

A. Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the signatures of at least thirty (30) percent of the employees in an appropriate bargaining unit, the Board shall post a notice to affected employees regarding the filed petition and proceed with the process for conducting a secret ballot representation election.

B. Once a labor organization has filed a petition with the Board requesting a representation election, other labor organizations may seek to be placed on the ballot. Any labor organization may file a competing petition containing the signatures of not less than thirty (30) percent of the employees in the appropriate bargaining unit no later than ten (10) calendar days after the Board has posted a written notice that a petition for a representation election has been filed by a labor organization.

C. All representation elections shall include the option for "no representation," except in a run-off election where the choice of "no representation" was not one (1) of the two (2) choices that received the highest votes.

D. In the event of an election with two (2) or more labor organizations on the ballot and none of the choices on the ballot received a majority of the votes cast, then a run-off election shall be held within fifteen (15) calendar days. The choices on the run-off election shall consist of the two (2) choices, which received the greatest number of votes in the original election.

E. A valid election requires that at least forty (40) percent of the eligible employees in an appropriate bargaining unit cast a vote. In an election with only one (1) labor organization, and the majority of the votes cast are in favor of representation the Board shall certify that labor organization as the exclusive representative for all the employees in the bargaining unit.

F. No election shall be conducted if an election has been conducted in the twelve-month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in Section 2.60.130(B) of this chapter, or after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

G. Election disputes shall be resolved by the Board.

H. As an alternative to the provisions of subsection A of this section, the employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local Board shall not certify an appropriate bargaining unit if the employer objects to the certification without an election. (Ord. 927 (part), 2004)

2.60.120 Exclusive representation.

A labor organization that has been certified by the Board as the exclusive representative for employees in an appropriate bargaining unit shall represent all employees in the bargaining unit. The exclusive representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees in the bargaining unit without discrimination or regard to membership or non membership in the labor organization. The existence of an exclusive bargaining representative shall not prevent employees from taking their grievances through the grievance process or filing prohibited practices with the Board. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of a memorandum of understanding between the employer and the exclusive representative applicable to

the day-to-day administration of the collective bargaining agreement. The exclusive representative shall be afforded the opportunity to be present at such hearings and make its views known. (Ord. 927 (part), 2004)

2.60.130 Decertification of exclusive representative.

A. Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty (30) percent of the employees in the appropriate bargaining unit make a written request to the Board for a decertification election. A decertification election shall be valid only if there are at least forty (40) percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement; provided, however, that a request for a decertification election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three (3) years.

C. When, within the time period prescribed in subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty (30) percent of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than twelve (12) months subsequent to a labor organization's certification as the exclusive representative. (Ord. 927 (part), 2004)

2.60.140 Scope of bargaining.

A. Except for retirement programs provided under the Public Employment Retirement Act, the parties shall bargain in good faith on all wages, hours and other terms and conditions of employment and other issues agreed to by the parties. The parties shall enter into a written agreement covering employment relations regarding the issues agreed to in collective bargaining.

B. Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.

C. The obligation to bargain collectively imposed by the ordinance codified in this chapter shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with State or Federal statutes. In the event of conflict between the provision of any Federal or State statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

D. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

E. Any agreement or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision. The arbitrator's decision shall not require the re-appropriation of funds.

F. The parties have a requirement that a grievance procedure culminating with final and binding arbitration be negotiated. This applies only to grievances and the interpretation and application of the agreement between the parties and does not apply to negotiation impasses. The parties shall share the cost of any proceedings conducted pursuant to this subsection equally. Each party is responsible for paying any cost related to its witnesses and representation. (Ord. 927 (part), 2004)

2.60.150 Negotiations and impasse resolution.

A. The following meetings shall be closed:

1. Meetings for the discussion of collective bargaining strategy between the governing body and the employer's negotiating team preliminary to negotiations sessions;

2. Collective bargaining sessions; and

3. Consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

B. The following negotiation procedures shall apply to the employer and exclusive representatives:

1. The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than one hundred twenty (120) days or later than sixty (60) days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.
2. All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.
3. Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.
4. Tentative agreements reached during negotiations will be reduced to writing, dated, and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.
5. Agreement on contract negotiations is accomplished when the Union President and the City Manager sign the agreement. Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

C. The following impasse procedure shall be followed by the employer and exclusive representative:

1. If an impasse occurs, either party shall request mediation assistance. If the parties cannot agree on a mediator, either party may request the assistance of the federal mediation and conciliation service.
2. If the impasse continues after thirty (30) calendar days, either party may request an unrestricted list of seven (7) arbitrators from the federal mediation and conciliation service. The parties shall choose one (1) arbitrator by alternately striking names from such list. Which party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding,

written decision resolving unresolved issues no later than thirty (30) calendar days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of one (1) of the two (2) parties' complete, last, best offer. However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's costs incurred pursuant to this subsection equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

3. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the employer to increase any employees' levels, steps, or grades of compensation contained in the existing contract. (Ord. 927 (part), 2004)

2.60.160 Employers—Prohibited practices.

A. A public employer or his or her representative shall not:

1. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

2. Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under the ordinance codified in this chapter;

3. Dominate or interfere in the formation, existence or administration of any labor organization;

4. Discriminate in regard to hiring or any term or condition of employment in order to encourage or discourage membership in a labor organization;

5. Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, grievance, or complaint or given any information or testimony under the provisions of this chapter or because an employee is forming, joining or choosing to be represented by a labor organization;

6. Refuse to bargain collectively in good faith with the exclusive representative;

7. Refuse or fail to comply with any provisions of this chapter, Board regulations, or the Public Employee Bargaining Act; or

8. Refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

B. During the negotiation and the impasse procedure, City Councilors and management employees are prohibited from negotiating issues which are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams. (Ord. 927 (part), 2004)

2.60.170 Employees—Labor organizations—Prohibited practices.

A. An employee, a labor organization, or its representative shall not:

1. Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex or national origin;

2. Solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;

3. Restrain or coerce any employee in the exercise of any right guaranteed by the provisions of this chapter;

4. Refuse to bargain collectively in good faith with the employer;

5. Refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

6. Refuse or fail to comply with any provision of this chapter;

7. Picket homes or private businesses of employees, appointed individuals or elected officials of the City of Hobbs;

8. Restrain or coerce the employer in the selection of its agent for bargaining.

B. During the negotiation and the impasse procedure the employees, the exclusive representative or any of its employees are prohibited from negotiating issues which are the subject of negotiations with anyone other than the appointed City negotiating team. It is the intent of this language that the integrity of the negotiating

process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams. (Ord. 927 (part), 2004)

2.60.180 Strikes and lockouts prohibited.

A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate or engage in an employee lockout.

B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence or withholding of service in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment. (Ord. 927 (part), 2004)

2.60.190 Agreements valid—Enforcement.

All collective bargaining agreements and other agreements between the employer and exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this chapter. (Ord. 927 (part), 2004)

2.60.200 Judicial enforcement—Standard of review.

A. The Board may request the District Court to enforce any order issued pursuant to this chapter, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:

1. Arbitrary, capricious or an abuse of discretion;
2. Not supported by substantial evidence on the record considered as a whole; or

3. Otherwise not in accordance with law.

B. Any person or party, including any labor organization, affected by a final regulation, order or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Board hearing. All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final regulation, order or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

1. Arbitrary, capricious or an abuse of discretion;
2. Not supported by substantial evidence on the record taken as a whole; or
3. Otherwise not in accordance with law. (Ord. 927 (part), 2004)

2.60.210 Severability.

If any part or application of the ordinance codified in this chapter is held invalid, the remainder or its application to other situations or persons shall not be affected. (Ord. 927 (part), 2004)

2.60.220 Effective date.

The effective date of the ordinance codified in this chapter is July 1, 2004. (Ord. 927 (part), 2004)

Title 3

REVENUE AND FINANCE

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Chapter 3.04 CLAIMS AGAINST THE CITY

3.04.010 Generally.

All accounts, claims and demands against the City shall be fully and completely itemized, with the date and character of item and by whose order, or at whose instance or upon what contract the supplies were furnished or labor performed.

Such accounts and claims shall be written upon or attached to blank bill heads furnished by the City, to which shall be annexed for the signature of the claimant, is or her bookkeeper or agent, a certificate in the following form:

CITY OF HOBBS, NEW MEXICO

TO _____

Address _____

_____

DATE ITEMS AUTHORIZED BY AMOUNT

_____

_____

I, the undersigned hereby certify that the above account is a true and correct statement of the amount due from said City of Hobbs, New Mexico; that the services have been rendered and the articles as herein stated, and that no part has been paid; that this indebtedness was incurred by the order of __.

_____

Claimant Sign Here

SUBSCRIBED AND SWORN TO before me this _____ day of _____, A.D., _____.

_____

Notary Public

My Commission Expires:

_____

Such itemized accounts and claims shall be read in open commission, referred to the proper committee for investigation and instruction to the finance committee and reported by the finance committee to the City Commission. All such reports shall be written with ink and duly dated. (Prior code § 2-1)

3.04.020 Limitation of actions.

Any person who shall have any claim against the City for services or materials rendered shall present the same in writing, on forms provided by the City, to the City Clerk. The failure to present any such claim within ninety (90) days after such claim shall have accrued shall be a bar to any recovery thereon. (Prior code § 2-2)

Chapter 3.08 LODGERS' TAX

3.08.010 Short title.

This chapter shall be known as and may be cited as "the lodgers' tax ordinance." (Ord. 854 § (part), 1999: prior code § 14-45)

3.08.020 Purpose.

The purpose of this chapter is to impose a tax which will be borne by persons using commercial lodging accommodations, which tax will provide revenues for the purpose of advertising, publicizing and promoting certain recreational and tourist-related attractions, facilities and events, as well as for acquiring, establishing and operating tourist-related attractions, facilities or transportation system as authorized in Section 3.08.140. (Ord. 854 § (part), 1999: prior code § 14-46)

3.08.030 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Board" means the Advisory Board established herein to make recommendations to and advise the City Commission, keep minutes of its proceedings and submit its recommendations, advice, correspondence and other pertinent documents to the City Commission.

"City Clerk" means the City Clerk of Hobbs, New Mexico.

"Corporation" means a legally separate entity created by state law possessing its own Taxpayer Identification Number as provided by the Internal Revenue Service of the United States of America.

"Event(s)" means a single observable occurrence that is determined to take place on a given date or date range (limited to a time period not to exceed two (2) weeks) at a specific location.

"Gross taxable rent" means the total amount of rent paid for lodging, not including the State gross receipts tax or local sales taxes.

"Immediate surrounding area" means the extra-territorial planning jurisdiction of the City unless expanded by resolution of the City Commission.

"Lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

"Lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

"Occupancy tax" means the tax on lodging authorized by the lodgers' tax act.

"Person" means a corporation, firm, other body corporate, partnership, limited liability company, or association; person includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the State of New Mexico, any corporation, department, instrumentality or agency of the Federal Government or the State Government or any political subdivision of the State.

"Performer" means a paid or otherwise compensated or reimbursed professional speaker, musician(s),or comedian. Specifically excluded are unpaid sports teams, family members or relatives of the promoter or performer.

"Promotion" means production costs of a lodgers' tax event, limited to costs of performer fees, sound and lighting (associated with the performance).

"Rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act.

"Taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging.

"Tax-exempt Entity" means a corporation, as previously described, that is precluded from paying federal tax due to the type of entity organized under the Internal Revenue Code of the United States of America.

"Tourist" means a person who travels for the purpose of business, pleasure or culture to the City and the immediate surrounding area.

"Tourist-related events" means events as previously described that are planned for, promoted to and attended by tourists.

"Tourist-related facilities and attractions" means Facilities and attractions that are intended to be used by or visited by tourists.

"Tourists related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

"Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

"Vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging. (Ord. 854 § (part), 1999: prior code § 14-47)
(Ord. No. 1052, 12-19-2011; Ord. No. 1064, 3-18-2013)

3.08.040 Imposition of tax.

There is imposed an occupancy tax of five (5) percent of gross taxable rent for lodging within the municipality paid to vendors. (Ord. 934, 2005: Ord. 854 § (part), 1999: prior code § 14-48)

3.08.050 Licensing.

A. No vendor shall engage in the business of providing lodging in the City who has first not obtained a license as provided in this section.

B. Applicants for a lodgers' tax vendor's license shall in addition to the business registration required by Section 5.04.050 of this Code submit an application to the City Clerk stating:

1. The name of the vendor, including identification of any person, as defined in this chapter, who owns or operates, or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
2. A description of the facilities, including the number of rooms and the usual schedule of rates therefor;
3. A description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car or others,

and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued; also the identification number provided by the Bureau of Revenue of the State of New Mexico;

4. The nature of the business of the vendor and to what extent, if any, his or her business is exempt from the lodgers' tax;

5. Other information reasonably necessary to effect a determination of eligibility for such license.

C. The City Clerk shall review applications for license within ten (10) days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodgers' tax.

D. An applicant who is dissatisfied with the decision of the City Clerk may appeal the decision to the City Commission by written notice to the City Clerk of such appeal to be made within fifteen (15) days of the date of the decision of the City

Clerk on the application. The matter shall be referred to the City Commission for hearing at a regular or special meeting in the usual course of business. The decision of the City Commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the City Clerk is transmitted. The action of the City Commission shall be deemed final.

E. If the City Commission finds for the applicant, the City Clerk shall issue the appropriate license or other notice conforming to the decision made by the City Commission. (Ord. 854 § (part), 1999: prior code § 14-49)

3.08.060 Exemptions generally.

The occupancy tax shall not apply:

A. If a vendee:

1. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days, or

2. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;

B. If the rent paid by the vendee is less than two dollars ($2.00) a day;

C. To lodging accommodations at institutions of the Federal Government, the State or any political subdivision thereof;

D. To lodging accommodations at religious, charitable, educational or philanthropic institutions, including, without limitation, such accommodations at summer camps operated by such institutions;

E. To clinics, hospitals or other medical facilities;

F. To privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; or

G. If the taxable premises does not have at least three (3) rooms or three (3) other units of accommodations for lodging. (Ord. 854 § (part), 1999: prior code § 14-50)

3.08.070 Collection—Reporting procedure.

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the City and shall act as a trustee therefor.

B. The tax shall be collected from vendees in accordance with this chapter and shall be charged separately from the rent fixed by the vendor for the lodgings. Every vendee shall be given a bill, invoice, receipt or other statement or memorandum of the price, charge or rent payable, upon which the lodgers' tax shall be stated, charged and shown separately.

C. Each vendor licensed under this chapter shall be liable to the City for the tax provided herein on the rent paid for lodging at his or her respective place of business.

D. Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the City Clerk, of the receipts for lodging paid to him or her in the preceding calendar month and shall remit the proceeds of the lodgers' tax to the City Treasurer. The report shall include sufficient information to enable the City to audit the report and shall be verified on oath by the vendor. Occupancy taxes not paid by the twenty-fifth of the month as provided herein shall be considered delinquent. (Ord. 854 § (part), 1999: prior code § 14-51)

3.08.080 Records—Duties of the vendor.

Every vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Hobbs, shall be open to the inspection of the City during reasonable hours, and shall be retained for three (3) years. (Ord. 854 § (part), 1999: prior code § 14-52)

3.08.090 Failure to make return—Computation, civil penalty and notice, collection of delinquencies—Occupancy tax is a lien.

A. Each vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the City, whether due to his or her failure to collect the tax or otherwise. He or she shall be liable for the tax plus a civil penalty equal to the greater of ten (10) percent of the amount not remitted or one hundred dollars ($100.00). The City Clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.

B. If payments are not received within fifteen (15) days of the mailing of the notice, the City may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, and interest on the unpaid principal at a rate not to exceed one (1) percent a month. If the City attempts collection through an attorney, or the City Attorney, for any

purpose with regard to this ordinance, the vendor shall be liable to the City for all costs; fees paid to the attorney or City Attorney, and all other expenses incurred in connection therewith.

C. The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7, NMSA 1978. Priority of the lien shall be determined from the date of filing.

D. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the City Clerk or treasurer the amount of any occupancy tax due the City. Any occupancy tax due the City shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the proceeds of the sale. (Ord. 854 § (part), 1999: prior code § 14-53)

3.08.100 Criminal penalties.

Any person found guilty of violating the provisions of the lodgers' tax ordinance for failure to pay the tax, to remit proceeds thereof to the municipality, or properly to account for any lodging and tax proceeds pertaining thereto, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City Jail for a term of not more than ninety (90) days, or by both such fine and imprisonment. (Ord. 854 § (part), 1999: prior code § 14-54)

3.08.110 Refunds and credits.

If any person believes he or she has made payment of any lodgers' tax in excess of that for which he or she was liable, he or she may claim a refund thereof by directing a written claim for refund to the City Clerk, no later than ninety (90) days from the date payment was made. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The City Clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to one hundred dollars ($100.00) or more may be made only with the approval of the City Commission. (Ord. 854 § (part), 1999: prior code § 14-55)

3.08.120 Vendor audits.

A. The City Commission shall conduct random audits to verify full payment of occupancy tax receipts.

B. The City Commission shall determine each year the number of vendors within the municipality to audit.

C. The audit(s) may be performed by any designee of the City Commission. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration. (Ord. 854 § (part), 1999: prior code § 14-56)

3.08.130 Lodgers' Tax Advisory Board—Duties.

A. The Mayor shall appoint a five-member Advisory Board that consists of two (2) members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two (2) members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one (1) member who is a resident of the municipality and represents the general public. All members of the Lodgers' Tax Advisory Board shall qualify for office by taking an oath to faithfully discharge the duties of the office.

B. The Advisory Board shall serve at the pleasure of the City Commission. The Board shall advise the City Commission on the expenditure of funds authorized by Subsection 3.08.140(A) of this chapter for advertising, publicizing, and promotion of tourist related attractions, facilities and events.

C. The City Commission shall directly determine expenditures of remaining funds authorized by Subsection 3.08.140(B) of this chapter.

D. The Advisory Board may make the final determination on the expenditure of funds authorized by Subsection 3.08.140(A) of this chapter, up to the amount of ten thousand dollars ($10,000.00). The Advisory Board shall submit to the City Commission recommendations for the expenditures of funds authorized by Section 3.08.140A of this chapter in excess of ten thousand dollars ($10,000.00).

E. The members of the Lodgers' Tax Advisory Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Lodgers' Tax Advisory Board for cause or for failure to remain qualified to serve, and shall fill any vacancy on the Lodgers' Tax Advisory Board that may occur.

F. The Lodgers' Tax Advisory Board shall meet regularly at least quarterly, on a regular date to be designated by the Lodgers' Tax Advisory Board; provided, that a special meeting may be called at any time by the written request to the Chairperson

of the Lodgers' Tax Advisory Board by three (3) members, or on call by the Chairperson with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public, as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum. (Ord. 948, 2006: Ord. 854 § (part), 1999: prior code § 14-57)

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010)

3.08.140 Eligible uses of lodgers' tax proceeds.

A. Not less than one-half (1/2) of the proceeds of such tax shall be used for the purposes of advertising, publicizing and promoting tourist-related events and facilities. Eligible uses of lodgers' tax proceeds shall not include administrative office overhead or expenses (i.e., Web site costs) and the purchase of real property or tangible personal property. Eligible uses only consist of expenditures that facilitate the purpose of the lodgers' tax ordinance as stated in Section 3.08.020 of this chapter. Lodgers' tax proceeds shall be awarded on the basis of stimulating the circulation of proceeds by increasing the number of hotel patrons, thereby increasing the lodgers' tax receipts.

B. Any balance of the occupancy tax proceeds not used for the purposes set forth in subsection A of this section may be used by the City to defray the costs of:

1. Collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;

2. Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality or Lea County;

3. The principal of, and interest on, any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 N.M.S.A. 1978;

4. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or Lea County and tourist facilities or attractions within the immediate surrounding area;

5. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the municipality or Lea County; or

6. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose. (Ord. 973, 2007: Ord. 854 § (part), 1999: prior code § 14-58)
(Ord. No. 1052, 12-19-2011)

3.08.145 Allocation of proceeds.

1. At least fifteen (15) percent of lodgers' tax proceeds shall fund public safety and city-incurred sanitation costs associated with lodgers' tax events, not to include necessary private security expenses, based on the scope of the event at the discretion of the City Manager.

2. Per Section 3-38-15 NMSA, 1978 Compilation, as amended, a minimum of fifty (50) percent of the lodgers' tax proceeds generated in Lea County as a Class A county must be used for advertising and promotion and such fifty (50) percent portion may not be accumulated beyond two (2) years nor used for any other purpose. Once each year the Lodgers' Tax Board shall recommend general allocations or events for uses of said fifty (50) percent minimum.

a. The City will allocate up to twenty (20) percent for the advertising, publicizing and promotion of tourist-related attractions and events, by issuing an annual request for proposals. Eligible organizations shall include non-profit, for-profit and public entities, excluding local governments. Maximum awards for non-profit and for-profit entities cannot exceed $25,000 per event. In no case shall funds be allocated to individual persons.

b. The City will allocate up to twenty-five (25) percent of lodgers' tax proceeds for the support and promotion of the Lea County Airport Commercial Air Service at Lea County Airport.

c. At least forty (40) percent of lodgers' tax proceeds shall fund the advertising, marketing, publicizing, promotion of tourist-related attractions, facilities, community, and events for the City of Hobbs and Lea County.

3. The Lodgers' Board is hereby authorized to approve expenditures for smaller events of ten thousand dollars ($10,000.00) or less and make recommendations to the City Commission for expenditures of greater amounts for a single event or

purpose; such events needing approval prior to the next scheduled Lodgers' Tax Board meeting or, if a quorum cannot be obtained, may be approved by the City Manager.

4. Second and subsequent years funding regarding for-profit events or those charging a fee, must be reviewed by the Commission, since such events are expected to become self-sustaining over time and require less or no lodgers' tax subsidy.

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010; Ord. No. 1052, 12-19-2011; Ord. No. 1064, 3-18-2013)

3.08.150 Contracting for services.

A. The City Commission may contract for the management of programs and activities funded with revenue from the lodgers' tax. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten (10) days of receiving the reports, the governing body shall furnish copies of them to the Advisory Board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.

B. A person or governmental agency with whom the municipality contracts under this section shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality shall make such records available for inspection.

C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act (3-38-13 to 3-28-24 N.M.S.A. 1978) may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or government agency with whom the municipality contracts under this section may subcontract with the approval of the governing body of the municipality. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records. (Ord. 854 § (part), 1999: prior code § 14-59)

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010)

Chapter 3.10 ECONOMIC DEVELOPMENT PLANNING

3.10.010 Title.

The ordinance codified in this chapter may be cited as the "Economic Development Strategic Plan Ordinance." (Ord. 915 (part), 2003)

3.10.020 Statutory authority.

The Economic Development Strategic Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities allowing public support of economic development (N.M.S.A. Section 5-10-1 through Section 5-10-13, 1978), and is adopted as part of the City's economic development plan. (Ord. 915 (part), 2003)

3.10.030 Purpose.

The purpose of the Economic Development Strategic Plan is to allow public support of economic projects to foster, promote, and enhance local economic development efforts while continuing to protect against unauthorized use of public money and other public resources. (Ord. 915 (part), 2003)

3.10.040 Assistance from City.

The City is authorized to provide direct or indirect assistance to qualifying businesses for furthering or implementing economic development planning and projects, and shall have the authority to contribute assets to development projects, but the imposition of taxes must be approved by the voters in referendum election as required by State law. (Ord. 915 (part), 2003)

3.10.050 Imposition of taxes.

The City may impose a municipal infrastructure gross receipts tax and dedicate the revenue therefrom for economic development projects. A total of 0.125% tax (in two (2) increments of 0.0625% each) may be imposed in accordance with State law. (Ord. 915 (part), 2003)

3.10.060 Economic Development Strategic Plan.

An Economic Development Strategic Plan has been prepared which details the procedures to be used for the purposes of attracting and implementing economic development initiatives. The Economic Development Strategic Plan is adopted and made a part of the ordinance codified in this chapter as though set forth in full in this

section. (Ord. 915 (part), 2003)

3.10.070 Joint powers agreement.

The City may engage in economic development projects involving one (1) or more other government entities for projects which encompass more than one (1) municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement, which agreement will establish the application criteria and the terms of all project participation contracts. Criteria established under a joint powers agreement shall be consistent with the provision of this chapter and State law.
(Ord. 915 (part), 2003)

Chapter 3.14 AFFORDABLE HOUSING PROGRAM*

3.14.010 Short title.

This chapter may be cited as the "Affordable Housing Ordinance."
(Ord. No. 1050, 12-5-2011)

3.14.020 Purpose.

This chapter is adopted to implement the City's Affordable Housing Program. In accordance with the N.M. Constitution, Art. IX § 14, the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the "Act"), and the MFA Affordable Housing Act Rules (the "Rules"), the purpose of the Affordable Housing Ordinance is to:

A. Establish procedures to ensure that both State and local housing assistance grantees are qualifying grantees who meet the requirements of the Act and the Rules both at the time of the award and throughout the term of any grant or loan under the Program;

B. Establish an application and award timetable for State housing assistance grants or loans to permit the selection of the qualifying grantee(s) by the City;

C. Create an evaluation process to determine:

1. The financial and management stability of the applicant;

2. The demonstrated commitment of the applicant to the community;

***Editor's note—**Ord. No. 1050, adopted Dec. 5, 2011, deleted the former Ch. 3.14, §§ 3.14.010—3.14.070, and enacted a new Ch. 3.14 as set out herein. The former Ch. 3.14 pertained to the Affordable Housing Program and derived from Ord. 959 (part), 2007.

3. A cost-benefit analysis of the project proposed by the applicant;
4. The benefits to the community of a proposed project;
5. The type or amount of assistance to be provided;
6. The scope of the affordable housing project;
7. Any substantive or matching contribution by the applicant to the proposed project;
8. A performance schedule for the qualifying grantee with performance criteria; and
9. Any other rules or procedures which the City believes are necessary for a full review and evaluation of the applicant and the application or which the MFA believes are necessary for a full review of the City's evaluation of the applicant.

D. Require long-term affordability of the City's Affordable Housing Projects so that a project cannot be sold shortly after completion and taken out of the affordable housing market to ensure a quick profit for the qualifying grantee;

E. Require that the City enter into a contract with the qualifying grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance and that said contract requires that the recipient of a contribution be subject to the jurisdiction of the New Mexico courts to enforce compliance with the Act, the Rules, and any agreement(s) between the recipient and the City, and which contract shall be subject to the review of the MFA in its discretion;

F. Require that each contract with a qualifying grantee include an authorization by the Commission of the intended contribution;

G. Require that a grant or loan for a project must impose a contractual obligation on the qualifying grantee that the affordable housing units in any project be occupied by persons of low or moderate income;

H. Require that the recipient of a contribution execute all necessary documents to secure against the loss of public funds or property in the event of default, or in the event that the qualifying grantee abandons or otherwise fails to complete the project, and imposing reimbursements by the recipient to be responsible to pay for all related attorney fees and costs for efforts by the City to enforce the rules, the Act, and any agreements created pursuant to this chapter;

I. Require that prior to any action of the Commission to authorize the transfer or disbursement of City funds to a recipient of a contribution an affordable housing project, a budget with a sufficient amount of appropriation to fund such a disbursement must have been submitted to the Commission and approved by the Commission prior to the approval of the disbursement, and/or the MFA before any expenditure of grant funds or transfer of granted property;

J. Require the contract to include requirement that qualifying grantee abide by a reasonable performance schedule and performance criteria, which the City may establish, in its discretion;

K. Require that the contract must require qualifying grantee to open its books and records, and provide information requested, as City and/or MFA deem necessary to determine compliance with the Act, Rules, and any applicable contracts; and may require qualifying grantee to pay costs of such examinations;

L. Require that all activities are in compliance with the Act and the Rules, as amended, and require compliance with the Act and the Rules in the provision of all contributions and by the recipients of contributions;

M. Require, as a condition of grant approval, proof of compliance with all applicable state and local laws, rules and ordinances;

N. Require that the contract contain a provision stating that the contribution authorized by the ordinance is consistent with the existing housing plan or housing elements in general plan;

O. Require that the contract contain a provision stating that it goes into effect subject to local ordinance requirements for publication and filing;

P. Require that any proposed amendment to the ordinance and or regulations shall be submitted to MFA for review;

Q. Require that a condition of grant or loan approval be proof of the need for the contribution, that the contribution will reduce the housing costs to persons of low or moderate income, and that there will be a direct benefit from the proposed project to the community or purported beneficiaries;

R. May provide for matching funds or using local, private or federal funds;

S. Shall provide definitions for "low-income and moderate-income" and setting out requirements for verification of income levels; and

T. Provide the City with a valid affordable housing program.
(Ord. No. 1050, 12-5-2011)

3.14.030 General definitions.

The following words and terms shall have the following meanings.

A. "Act" shall mean the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq., as amended.

B. "Affordable" shall mean consistent with minimum rent and/or income limitations set forth in the MFA Act, and in guidelines established by MFA.

C. "Affordable housing" means residential housing primarily for persons of low or moderate income.

D. "Affordable housing funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act for payment of the costs of infrastructure for affordable housing under an affordable housing plan.

E. "Affordable housing plan" or "plan" shall mean a plan pursuant to an affordable housing program that contemplates one (1) or more affordable housing projects, which may be developed in one (1) or more phases.

F. "Affordable housing program" or "program" shall mean any programs the City and/or the MFA establish pursuant to the Act.

G. "Affordable housing project" or "project" shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion, which may be undertaken in one or more phases, as part of an affordable housing plan, as approved by the City and/or the MFA for the primary purposes as allowed by the Act.

H. "Affordability period" shall mean:

1. If the fair market value of any housing assistance grant or the total amount of affordable housing funds that have been awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from one dollar ($1.00) to fourteen thousand nine hundred and ninety-nine dollars ($14,999.00), then the affordability period shall be not less than five (5) years.

2. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is from fifteen thousand dollars ($15,000.00) up to and including forty thousand dollars ($40,000.00), then the affordability period shall be not less than ten (10) years.

3. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is from forty thousand dollars ($40,000.00) up to and including one hundred thousand dollars ($100,000.00), then the affordability period shall be not less than fifteen (15) years.

4. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is greater than one hundred thousand dollars ($100,000.00), then the affordability period shall be not less than twenty (20) years.

I. "Applicant" shall mean, subject to further qualifications in Section 3.14.040(C), an individual, a governmental housing agency, a regional housing authority, a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization meeting the appropriate criteria of the City and/or the MFA.

J. "Application" shall mean an application to participate in one (1) or more affordable housing programs or affordable housing plans under the Act submitted by an applicant to the City and/or the MFA.

K. "Area median income" or "AMI" shall mean the household area median income for various family sizes in Hobbs, with specific income levels defined below.

K1. "Income levels qualifying For affordable housing assistance" shall mean those specific income limit definitions for various income groups are provided by HUD for HUD programs such as HOME and CDBG, which define low and moderate income households as follows:

K2. "Low and moderate income households" shall mean those households earning below eighty (80) percent of AMI.

K3. "Moderate income households" shall mean those households earning from eighty (80) percent AMI and below to fifty (50) percent AMI.

K4. "Low income households" shall mean those households with incomes of fifty (50) percent AMI and below to thirty (30) percent AMI.

K5. "Extremely low income households" shall mean those households with incomes below thirty (30) percent AMI.

K6. "Maximum household income to quality for housing assistance" shall mean one hundred twenty (120) percent of AMI is the maximum household income allowed to qualify for affordable housing assistance.

L. "Builder" shall mean an individual or entity licensed as a general contractor to construct residential housing in the State that satisfies the requirements of a qualifying grantee and has been approved by the City and/or the MFA to participate in an affordable housing program. The term "builder" shall also include an individual or entity that satisfies the requirements of a qualifying grantee and has been approved by the City and/or the MFA to participate in an affordable housing program, who is not licensed as a general contractor in the State, provided such individual or entity contracts with a general contractor licensed in the State to construct residential housing.

M. "Building" shall mean a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land donated for use in connection with an affordable housing project.

N. "Congregate housing facility" shall mean residential housing designed for occupancy by more than four persons of low or moderate income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping, and bathing facilities.

O. "Eligible nonprofit organization" shall mean an organization:

1. Having the provision of housing or housing related services to low or moderate income persons as their primary mission;
2. That is a recipient of a 501(c)(3) designation prior to submitting application; and
3. Having no part of net earnings inuring to benefit of any member, founder, contributor, or individual.

P. "Eligible non-individual applicant" shall mean an organization:

1. That is duly organized under state, local, or tribal laws and have proof of such organization;
2. Having a functioning accounting system operated in accordance with generally accepted accounting principles or has designated entity that will maintain such accounting system;
3. Having among its purposes significant activities related to providing housing or services to persons of low or moderate income;
4. With evidence or certification that applicant has no significant outstanding or unresolved monitoring findings from the City or the MFA, or its most recent

independent financial audit, or if it has such findings, it has certified letter from City, MFA, or auditor stating that findings in process of being resolved.

Q. "Federal Government" shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

R. "Household" shall mean one (1) or more persons occupying a housing unit.

S. "Housing Assistance Grant" means the donation by the City of:

1. Land for construction of a project;
2. A portion of the costs of land for construction of a project;
3. An existing building for conversion or renovation as affordable housing;
4. A portion of the costs of conversion or renovation of buildings into affordable housing; or
5. The costs of financing or infrastructure necessary to support affordable housing.

T. "HUD" shall mean the United States Department of Housing and Urban Development.

U. "Infrastructure" shall mean infrastructure improvements and infrastructure purposes.

V. "Infrastructure improvement" includes, but is not limited to:

1. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
2. Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
3. Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
4. Areas for motor vehicle use for travel, ingress, egress and parking;
5. Trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;
6. Parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;
7. Landscaping, including earthworks, structures, plants, trees and related water delivery systems;

8. Electrical transmission and distribution facilities;
9. Natural gas distribution facilities;
10. Lighting systems;
11. Cable or other telecommunications lines and related equipment;
12. Traffic control systems and devices, including signals, controls, markings and signs;
13. Inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
14. Heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements, that are affixed to real property.

W. "Infrastructure purpose" shall mean:

1. Planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the infrastructure, provided the City may determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an affordable housing project for which affordable housing funds and/or housing assistance grants are awarded, loaned, donated or otherwise distributed under the Act;
2. Acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;
3. Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
4. Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

X. "MFA" shall mean the New Mexico Mortgage Finance Authority.

Y. "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

Z. "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the City and/or the MFA, on a fee interest in real property located within the State or

on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan.

AA. "Mortgage lender" shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the State, is authorized to make mortgage loans in the State and is approved by the City and/or the MFA and either the Federal Housing Authority, Veterans' Affairs, Federal National Mortgage Association (now known as Fannie Mae), or Federal Home Loan Mortgage Corporation.

BB. "Mortgage loan" shall mean a financial obligation secured by a mortgage, including a mortgage loan for a project.

CC. "Multiple family housing project" shall mean residential housing that is designed for occupancy by more than four (4) persons or families living independently of each other or living in a congregate housing facility, at least sixty (60) percent of whom are persons of low or moderate income, including without limitation persons of low or moderate income who are elderly and handicapped as determined by the City and/or the MFA, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by Federal Tax Law.

DD. "Multi-family housing program" shall mean a program involving a congregate housing facility, a multiple family housing project or a transitional housing facility.

EE. "Persons of low or moderate income" shall mean persons and families within the State who are determined by the MFA to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the MFA to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal Income Tax purposes.

FF. "Ordinance" or "Revised Ordinance" shall mean this chapter.

GG. "Policies and procedures" shall mean policies and procedures of the MFA, including but not limited to, mortgage loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

HH. "Public service agencies" shall include, but are not limited to, any entities that support affordable housing and which believe that the program or project proposed by the applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the affordable housing program or project for which the applicant is applying.

II. "Qualifying grantee" means:

1. An individual who is qualified to receive assistance pursuant to the Act and is approved by the City; and
2. A governmental housing agency, regional housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:
    a. Is organized under State or local laws and can provide proof of such organization;
    b. If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
    c. Is approved by the City.

JJ. "Recertification" shall mean the recertification of applicants and/or qualifying grantees participating in any affordable housing programs or in any programs under the Act as determined necessary from time to time by the City and/or the MFA.

KK. "Rehabilitation" shall mean the substantial renovation or reconstruction of an existing single-family residence or a multi-family housing project, which complies with requirements established by the MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

LL. "Residential housing" shall mean any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one (1) or more households and any real property that is offered for

sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.

MM. "Residential use" shall mean that the structure or the portion of the structure to benefit from the affordable housing funds or housing assistance grant, is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

NN. "RFP" shall mean any request for proposal made by the City.

OO. "Rules" shall mean the New Mexico Mortgage Finance Authority Affordable Housing Rules adopted pursuant to Section 6-27-8(B) NMSA 1978.

PP. "State" shall mean the State of New Mexico.

QQ. "City" shall mean the City of Hobbs, New Mexico, a New Mexico municipal corporation.

RR. "Transitional housing facility" shall mean residential housing that is designed for temporary or transitional occupancy by persons of low or moderate income or special needs.

SS. "Potential qualifying grantee" or ("PQG")" shall mean an entity that the City is working with to attain qualifying grantee status approved by the MFA.
(Ord. No. 1050, 12-5-2011)

3.14.040 General requirements.

With the exception of housing assistance grants involving funding from the State which shall be governed by Section 3.14.040(L) below, the following requirements shall apply to all housing assistance grants and/or affordable housing funds awarded, loaned or otherwise distributed by the City under the Act to a qualifying grantee.

A. Pre-qualification of Applicants as Qualifying Grantees. The City, in its discretion, may from time to time permit pre-qualification of applicants as qualifying grantees, as follows:

1. The City may review information submitted by eligible applicant and certify in writing that applicant is a "potential qualifying grantee" ("PQG"). The City must then provide a copy of the certification to MFA, upon its request.

2. The City's certification shall be valid for up to one (1) year, subject to the ability of PQG to certify in writing at time of application or response to RFP that there have been no material changes in any of the information or documentation provided by, or representations made by PQG to the City and upon which the City has based its decision to certify the applicant as a PQG.
3. Notwithstanding the foregoing, certification as PQG does not mean that the PQG will be chosen by the City as a qualifying grantee, or that MFA will determine that PQG is a qualifying grantee, or that any application submitted by PQG is complete or otherwise in compliance with the Act or Rules, or that PQG will be awarded any affordable housing funds or housing assistance grants.

B. Request for Proposals.

1. The City, in its discretion, may issue one (1) or more RFP's to solicit applications from applicants or shall otherwise identify a qualifying grantee for the use of any affordable housing funds or housing assistance grants to be awarded, loaned, donated or otherwise distributed under the Act.
2. If an RFP process is permitted, the City must specify an application process, including requirements for the contents, submission, review by the City, certification to the MFA, and notification to the applicant, that are in accordance with the Rules. In responses to the City request for proposals, the applicant must attach the application and application shall include the following:
   i. One (1) original application, with all required schedules, documents, or other such information that may be required by City and/or the MFA or in any RFP which may have been issued by the City, must be included in application;
   ii. A proposal describing nature and scope of affordable housing project proposed by applicant and for which applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which applicant proposes to provide to persons of low or moderate income;
   iii. Executive summary and project narrative(s) that address evaluation criteria set forth in any RFP issued by City for the affordable housing funds or assistance grant for which applicant is applying;

iv. For nonprofit organization, proof of 501(c)(3) tax status and documentation confirming that no part of its net earnings inures to the benefit of any member, founder, contributor, or individual;

v. Current annual budget for applicant, including all sources and uses of funds - not just those related to relevant programs, and/or a current annual budget only for program for which applicant is applying for housing assistance grant, or as otherwise may be required by City in its discretion;

vi. A proposed budget for affordable housing project for which applicant is applying for affordable housing funds or for housing assistance grant;

vii. Approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to persons of low or moderate income;

viii. List of current board members, including designated homeless participation, where required by the City;

ix. Current independent financial audit;

x. Evidence (or a certification as allowed by City) that applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system;

xi. Evidence or a certification that applicant has no significant outstanding or unresolved monitoring findings from City or MFA, or its most recent financial audit; or, if it has significant outstanding or unresolved monitoring findings from the City or MFA, or its most recent independent financial audit, it has a certified letter from the City, MFA , or the auditor stating that the findings are in process of being resolved;

xii. Organizational chart, including job titles and qualifications for applicant's employees or as otherwise may be required by City, and job descriptions may be submitted;

xiii. Documentation that applicant is duly organized in accordance with the State or local law and is in good standing with any State authorities such as the Public Regulation Commission (e.g., Articles, Bylaws, and Certificate of Good Standing for a Corporation;

Articles, Operating Agreement, and Certificate of Good Standing for a Limited Liability Company; partnership agreement and certificate of limited partnership for a partnership);

xiv. Certifications as may be required by the City signed by chief executive officer, board president or authorized official of the applicant;

xv. Information as may be required by the City in order for it to determine the financial and management stability of the applicant;

xvi. Information as may be required by the City in order for it to determine the demonstrated commitment of the applicant to the community;

xvii. Adequate information, as required by the City regarding applicant's proposed affordable housing project. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, and that there is or will be a direct benefit from the project proposed by the applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

xviii. Information supporting the benefits to the community of the affordable housing project proposed by the applicant;

xix. The City may require that the applicant provide proof of substantive or matching funds or contributions and/or in-kind donations to the proposed affordable housing project in connection with the application for funds under the Act. Nothing contained herein shall prevent or preclude an applicant from matching or using local, private, or federal funds in connection with a specific housing assistance grant or a grant of affordable housing funds under the Act;

xx. Any certifications or other proof which City may require in order for the City and/or the MFA to confirm that the applicant is in compliance with all applicable Federal, State and local laws, rules and ordinances;

xxi. Applications submitted in connection with a multi-family housing project, the following additional information shall also be required to be submitted by the applicant to the City:

a. A verified certificate that, among other things (i) identifies every multi-family housing program, including every assisted

or insured project of HUD, RHS, FHA and any other State or local government housing finance agency in which such applicant has been or is a principal; (ii) except as shown on such certificate, states that: (I) no mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given; (II) there has not been a suspension or termination of payments under any HUD assistance contract in which the applicant has had a legal or beneficial interest; (III) such applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and (IV) the applicant has not defaulted on an obligation covered by a surety or performance bond. If such applicant cannot certify to each of the above, such applicant shall submit a signed statement to explain the facts and circumstances which such applicant believes will explain the lack of certification. The City and/or the MFA may then determine if such applicant is or is not qualified.

b. The experience of the applicant in developing, financing and managing multiple-family housing projects.

c. Whether the applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

xxii. If the applicant is a mortgage lender, the City shall consider, among other things:

a. The financial condition of the applicant;

b. The terms and conditions of any loans to be made;

c. The aggregate principal balances of any loans to be made to each applicant compared with the aggregate principal balances of the loans to be made to all other applicants;

d. The City and/or the MFA's assessment of the ability of the applicant or its designated servicer to act as originator and servicer of mortgage loans for any multi-family housing programs or other programs to be financed; and

e. Previous participation by the applicant in the MFA's programs and HUD, FHA, or RHS programs.

xxiii. All applications shall contain a verification signed by the applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the applicant's information, knowledge, and belief.

C. Applicant Eligibility. The following applicants are eligible under the Act to apply for affordable housing funds or a housing assistance grant to provide housing or related services to persons of low or moderate income in their community:

1. All individuals who are qualified to receive assistance pursuant to the Act, the Rules, and this chapter that are approved by the City;
2. All regional housing authorities and any governmental housing agencies;
3. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;
4. All non-profit organizations meeting the following requirements:
   a. A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income;
   b. The non-profit organization must have received its 501(c) (3) designation prior to submitting an application; and
   c. The non-profit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.
5. All non-individual applicants must:
   a. Be organized under State or local laws and can provide proof of such organization and be approved by the City;
   b. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
   c. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and

d. Have no significant outstanding or unresolved monitoring findings from the City, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the City, the MFA, or auditor stating that the findings are in the process of being resolved.

D. Applications.

1. Process for Applying. From time to time, the City in its discretion, may also receive periodic applications, not necessarily based on response to a specific RFP, from applicants for affordable housing projects. Applicants wishing to apply for a housing assistance grant, including the use of any affordable housing funds, or to participate in any affordable housing program are required to submit to the City the following (as applicable):

a. One (1) original application, together with all required schedules, documents, or such other information which may be required by the City or in any RFP which may have been issued by the City, must be included in the completed application;

b. A proposal describing the nature and scope of the affordable housing project proposed by the applicant and for which the applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the applicant proposes to provide to persons of low or moderate income;

c. Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the City for the affordable housing funds or the housing assistance grant for which the applicant is applying;

d. A proposed budget for the affordable housing project for which the applicant is applying for affordable housing funds or for a housing assistance grant;

e. A current independent financial audit;

f. If the applicant is a non-profit organization: proof of 501(c)(3) tax status;

g. Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual; if the applicant is a legal entity, including a non-profit organization:

A current annual budget for the applicant, including all sources and uses of funds not just those related to relevant programs and/or a

current annual budget only for the program for which the applicant is applying for a housing assistance grant, or as otherwise may be required by the City and/or the MFA in its discretion; an approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to persons or households of low or moderate income;

A list of members of the applicant's current board of directors or other governing body, including designated homeless participation, where required by the City;

Evidence (or a certification as may be allowed by the City) that the applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;

Evidence that the applicant has no significant outstanding or unresolved monitoring findings from the City, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the City, the MFA, or its most recent independent financial audit, it has a certified letter from the City, the MFA, or the auditor stating that the findings are in the process of being resolved;

An organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by the City and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;

Documentation that the applicant is duly organized under State or local law and certification that the applicant is in good standing with any State authorities, including the Public Regulation Commission and the Secretary of State;

h. Information as may be required by the City in order for it to determine the financial and management stability of the applicant;

i. Information as may be required by the City in order for it to determine the demonstrated commitment of the applicant to the community;

j. A completed cost-benefit analysis of the affordable housing project proposed by the applicant. Any cost-benefit analysis must include

documentation that clearly evidences that there is or will be a direct benefit from the project proposed by the applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

k. Information to the City supporting the benefits to the community of the affordable housing project proposed by the applicant;

l. Proof of substantive or matching funds or contributions and/or in-kind donations to the proposed affordable housing project in connection with the application for funds under the Act. Nothing contained herein shall prevent or preclude an applicant from matching or using local, private, or federal funds in connection with a specific housing assistance grant or a grant of affordable housing funds under the Act;

m. Any certifications or other proof which it may require in order for the City to confirm that the applicant is in compliance with all applicable Federal, State and local laws, rules and ordinances;

n. A verification signed by the applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the applicant's information, knowledge, and belief;

o. Certifications as may be required by the City and signed by chief executive officer, board president, Mayor or other authorized official of the applicant, provided that the City at its discretion may waive any of the foregoing requirements if not deemed applicable;

2. Additional Requirements for Multi-Family Housing Projects. Applicants who are submitting applications in connection with a multi-family housing program must also submit to the City the following additional information:

a. A verified certificate that, among other things:

i. Identifies every multi-family housing program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such applicant has been or is a principal;

ii. Except as shown on such certificate, states that:

(A) No mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;

(B) There has not been a suspension or termination of payments under any HUD assistance contract in which the applicant has had a legal or beneficial interest;

(C) Such applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any State government from doing business with such department or agency because of misconduct or alleged misconduct; and

(D) The applicant has not defaulted on an obligation covered by a surety or performance bond.

If such applicant cannot certify to each of the above, such applicant shall submit a signed statement to explain the facts and circumstances that such applicant believes will explain the lack of certification. The City may then determine if such applicant is or is not qualified.

b. The experience of the applicant in developing, financing and managing multiple-family housing projects; and

c. Whether the applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

3. Additional Requirements for Mortgage Lenders. If the applicant is a mortgage lender, the City shall consider, among other things:

a. The financial condition of the applicant;

b. The terms and conditions of any loans to be made;

c. The aggregate principal balances of any loans to be made to each applicant compared with the aggregate principal balances of the loans to be made to all other applicants;

d. The City's assessment of the ability of the applicant or its designated servicer to act as originator and servicer of mortgage loans for any multi-family housing programs or other programs to be financed; and

e. Previous participation by the applicant in the MFA's programs and HUD, Federal Housing Authority, or Rural Housing Service programs.

4. Submission Procedure.
   a. Time, Place and Method of Submission Delivery.
      i. If the City has issued an RFP, all applications must be received by the City no later than the deadline set forth in the RFP; otherwise, all applications must be received by the City by the deadline the City has established in connection with the respective award or grant. So that any qualifying grantees may be selected prior to January of the year in which any housing assistance grant would be made, the City shall issue any RFP's, solicit any Applications, or otherwise identify any qualifying grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than forty-five (45) days in which to review any such applications or otherwise determine or confirm that an applicant is a qualifying grantee under the Act and consistent with the Rules.
      ii. Applications shall be submitted by applicants to the City in the form required by the City and shall contain all information which is required by this chapter and any RFP which may have been issued.
   b. Additional Factors. The application procedures shall take into consideration:
      i. Timely completion and submission to the City of an application or other appropriate response to any solicitation by the City;
      ii. Timely submission of all other information and documentation related to the program required by the City as set forth in this chapter or as set forth in the Rules;
      iii. Timely payment of any fees required to be paid to the City at the time of submission of the application; and
      iv. Compliance with program eligibility requirements as set forth in the Act, the Rules and this chapter.
   c. Submission Format.
      i. City forms or MFA forms (if available) must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

ii. An applicant's failure to provide or complete any element of an application, including all requirements of the City or as may be listed on any RFP, may result in the rejection of the application prior to review.

iii. Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.

iv. The City and the MFA reserve the right to request further information from any applicant so long as the request is done fairly and does not provide any applicant an undue advantage over another applicant.

v. The City in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.

vi. Neither the City nor the MFA shall be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, the City or the MFA, as applicable, may establish and collect fees from applicants who file applications. Notice that fees will be charged and the amount of any such fees shall be included by the City or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the application solicitation process.

5. Review by the City. On receipt of an application, the City shall:

a. Determine whether the application submitted by the applicant is complete and responsive;

b. Determine whether the applicant is a qualifying grantee as defined herein and in the Act;

c. Review and analyze whether the applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to persons of low or moderate income;

d. Determine whether the applicant has demonstrated experience related to providing housing or services to persons of low or moderate income, as well as experience and/or the capacity to administer the affordable housing program or project for which the applicant has applied;

e. Determine whether the applicant's proposal provides a plan for coordinating with other service providers in the community; whether the applicant's plan addresses how persons of low income or moderate income in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, State and local resources; and, whether the applicant's plan addresses outreach efforts to reach the population to be served as identified by the City in any RFP or otherwise;

f. Determine whether the applicant has support from Public Service Agencies, or such other support as may be required by the City and/or the MFA in its discretion, for its proposed services in the community;

g. Ascertain the amount of any matching funds or in-kind services specific to the program that may be utilized by the applicant in connection with the program;

h. Ascertain whether any local, private, or Federal funds will be used by the applicant in connection with the specific grant for which the applicant is applying;

i. Ascertain whether the applicant has and can demonstrate the capability to manage the implementation of the program for which the applicant is applying;

j. If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant had no outstanding findings or matters of non-compliance with program requirements from the City or the MFA, as applicable or if it has any such findings, it has a certified letter from the City, the MFA, or auditor stating that the findings are in the process of being resolved;

k. If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the City or the MFA, as applicable, for those prior program funds;

l. Evaluate the applicant's proposal in part based upon the applicant's current financial audit;

m. Evaluate the applicant's proposed budget for the project for which the applicant is applying for affordable housing funds or a housing assistance grant which proposed budget must be approved by the City before applicant can be approved as a qualifying grantee and any expenditure of grant funds under the Act or granted property is transferred to the applicant;

n. On receipt of an application from a builder, the City will analyze the builder's ability to construct and sell sufficient residential housing units to persons of low or moderate income within the time or times as may be required by the City.

o. Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs.

6. Certification by the City to the MFA. The City shall certify an application to the MFA in writing upon:

   a. Completion of its review of the application;

   b. Determination that the application is complete;

   c. Determination that the requirements of the Act, the Rules and this chapter have been satisfied; and

   d. Determination that the applicant is a qualifying grantee.

7. Review by the MFA. The MFA upon its receipt of the certification from the City may, in its discretion, review the application and any of the materials submitted by the applicant to the City. The MFA may also request any additional information from the applicant, which it may require in order to determine whether the applicant is a qualifying grantee under the Act and the application is complete. The MFA will then notify the City of its determination of whether or not the application is complete and that the requirements of the Act and the Rules have been satisfied and the applicant is a qualifying grantee. Unless the period is extended for good cause shown, the MFA shall act on an application within forty-five (45) days of its receipt of any application, which the MFA deems to be complete, and, if not acted upon, the application shall be deemed to be approved.

8. Notification of Acceptance. The City, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in the this chapter and in any RFP issued by the City and upon its determination that the applicant is a qualifying grantee,

and upon its receipt of notification from the MFA that it agrees that the application is complete and that the Act and Rules have been satisfied and the applicant is a qualifying grantee, by written notice shall notify each applicant which has submitted an application of the approval or disapproval of its application. Upon approval of its application, the applicant shall be considered approved to participate in the affordable housing program. The City's and the MFA's determination of any application shall be conclusive.

E. Additional Requirements. Upon acceptance, the following additional requirements shall apply to any applicant, who is a qualifying grantee:

1. Contractual Requirements. The qualifying grantee shall enter into one (1) or more contracts with the City, which contract(s) shall be consistent with both the Act and the Rules, and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee.

2. Security Provisions; Collateral Requirements. In accordance with the Act, the Rules and this chapter, the City shall require the qualifying grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the qualifying grantee abandons or fails to complete the affordable housing project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the City and/or the MFA may incur in enforcing the provisions of this chapter, the Rules, the Act and/or any agreement entered into by the City and the qualifying grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City may require in order to allow for any funds which the qualifying grantee may receive under a housing assistance grant or affordable housing funds to be adequately secured and to allow the City and the MFA to ensure that such funds shall be utilized by the qualifying grantee in accordance with the Act, the Rules and this chapter.

3. Performance Schedule and Criteria. The qualifying grantee shall be required to abide by a reasonable performance schedule and performance criteria that the City, in its discretion, may establish.

4. Examination of Books and Records. The qualifying grantee shall submit to, and the City shall cause to be made, such examinations of the books and records of each qualifying grantee as the City and/or the MFA deems necessary or appropriate to determine the qualifying grantee's compliance with the terms of the Act, the Rules, this chapter and any contracts between the qualifying grantee and the City. The City and/or the MFA may require each qualifying grantee to pay the costs of any such examination.
5. Infrastructure Cost Reimbursement Contracts.
   a. Cost Reimbursements. Payment to a qualifying grantee under cost reimbursable contract provisions shall be made upon the City's receipt from the qualifying grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the qualifying grantee and the City.
   b. Cost Reimbursements for Units of Service. Payment under any unit cost contract provisions shall be made upon the City's receipt from the qualifying grantee of a certified and documented invoice showing the number of units of service provided during the billing period.
   c. Rate at Which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the qualifying grantee at an approximate level rate during the term of any agreement between the qualifying grantee and the City. If the City determines that the qualifying grantee is under spending or overspending, then the City may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.
   d. Invoices. Qualifying grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the City. Failure to submit invoices within twenty (20) days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.
   e. No Dual Application of Costs. The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the qualifying grantee and which has not been approved by the City in advance, in writing.
   f. Prohibition of Substitution of Funds. Any affordable housing funds or other amounts received by qualifying grantee may not be used by

qualifying grantee to replace other amounts made available or designated by the State or local governments through appropriations for use for the purposes of the Act.

g. Cost Allocation. The qualifying grantee shall clearly identify and distribute all costs incurred pertaining to the affordable housing project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the City.

6. Additional Information. Qualifying grantees shall provide the City with any and all information which the City reasonably may require in order for it to confirm that the qualifying grantees continue to satisfy the requirements of the Act, the Rules and this chapter throughout the term of any contract and/or any affordability period or otherwise as may be required by the City or the MFA in its discretion. At a minimum, on an annual basis, the City shall certify to the MFA in writing that to the best of its knowledge the qualifying grantee is in compliance with applicable provisions of the Act, the Rules and this chapter.

F. Affordable Housing Requirements. All affordable housing funds or housing assistance grants awarded under the Act are to be used by qualifying grantees for the benefit of persons of low or moderate income subject to the provisions of the Act and with particular regard to their housing related needs.

1. Single Family Property. Qualifying grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, as affordable housing for so long as any or all of the affordable housing funds which have been awarded, loaned, or otherwise conveyed to the qualifying grantee are unpaid and outstanding, or for the duration of the affordability period, which ever is longer.

2. Multi-Family Property.

a. Single Apartment within a Multi-Family Property. Qualifying grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, those

apartments shall be leased to persons of low or moderate income at the time of any such award. Qualifying grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least sixty (60) percent of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying grantees also shall agree that the persons of low or moderate income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

b. Multiple Apartments. Qualifying grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, they shall maintain not less than sixty (60) percent of the housing units as affordable housing for so long as any or all of the affordable housing funds which have been awarded, loaned, or otherwise conveyed to the qualifying grantee are unpaid and outstanding or the affordability period, which ever is longer.

3. Non-Residential Property. Qualifying grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, as a facility which provides housing related-services to persons of low or moderate income for so long as any or all of the affordable housing funds which have been awarded, loaned, or otherwise conveyed to the qualifying grantee are unpaid and outstanding, or for the duration of the affordability period, which ever is longer.

4. Housing Assistance Grant Affordability Requirements. Qualifying grantees shall agree that they shall maintain any land or buildings received as a housing assistance grant either as either single-family or multi-family

affordable housing in accordance with Sections 3.14.040(F)(1) and (2) or as a facility which provides housing related-services to persons of low or moderate income in accordance with Section 3.14.040(F)(3) (as applicable) for the duration of the affordability period. Qualifying grantees shall agree that they shall maintain any land or buildings for which they have received the costs of infrastructure as a housing assistance grant either as either single-family or multi-family affordable housing or as a facility which provides housing related-services to persons of low or moderate income (as applicable) for the duration of the affordability period. In calculating the affordability period for housing assistance grants of either land or buildings, the fair market value of the land or buildings or the costs of Infrastructure at the time of the donation by the State or City shall apply.

5. Affordability Period. The City, in its discretion, may increase the affordability period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City may enter into with any qualifying grantee or beneficiary of the affordable housing funds or of the housing assistance grant. See definition of affordability period in Section 3.14.030(H) of this chapter. Notwithstanding the foregoing, in the discretion of the MFA, weatherization funds conveyed from the State to the MFA and/or any other similar conveyances where an affordability period is not practical, shall not be subject to the affordability period requirements of this Section 3.14.040(E); but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the City and/or the MFA.

G. Consent to Jurisdiction. Each qualifying grantee shall consent to the jurisdiction of the courts of the State over any proceeding to enforce compliance with the terms of the Act, the Rules and this chapter and any agreement between the qualifying grantee and the City and/or the MFA.

H. Recertification Procedures.

1. The qualifying grantee must meet the requirements of the Act, the Rules and this chapter both at the time of any award and throughout the term of any grant and contract related thereto.

2. The City may establish procedures for recertifying qualifying grantees from time to time.

3. Qualifying grantees that fail to satisfy the requirements for recertification shall cease to be eligible and shall be denied further participation in affordable housing programs until the requirements of the City and the MFA are satisfied.

I. Compliance with the Law. A qualifying grantee shall provide the City with any certifications or other proof that it may require in order for the City and the MFA to confirm that the qualifying grantee and the qualifying grantee's proposed project are in compliance with all applicable federal, State and local laws, rules and ordinances.

J. Extension of Affordable Housing Programs. The MFA shall have the power to create variations or extensions of affordable housing programs, or additional programs that comply with the Act and the Rules.

K. City Grant Requirements.

1. The City is authorized to make housing assistance grants under the Act. Upon determination that the City will make a housing assistance grant, including the use of any affordable housing funds, the City will provide the MFA with the following:

a. Documentation that confirms that the City has an existing valid affordable housing plan;

b. A copy of the proposed ordinance which provides for the authorization of the housing assistance grant, including the use of any affordable housing funds, together with a written certification that the proposed grantee is in compliance with Act and the Rules so that the MFA may confirm that the ordinance is in compliance with the Act, that the application is complete, and that the proposed grantee is a qualifying grantee under the Act and the Rules.

2. Prior to the submission of the ordinance to the Commission, the Commission must approve the budget submitted by the applicant.

3. An ordinance authorizing the City to make a housing assistance grant and/or distribute affordable housing funds:

a. Must authorize the grant, including use of affordable housing funds, if any;

b. Must state the requirements and purpose of the grant; and

c. Must authorize the transfer or disbursement to the qualifying grantee only after a budget is submitted to and approved by the Commission;

d. Must comply with the Rules, as amended.

e. May provide for matching or using local, private or Federal funds either through direct participation with a federal agency pursuant to Federal law or through indirect participation through the MFA.

4. The MFA shall act to approve the proposed housing assistance grant authorized by the City within forty-five (45) days of its receipt of the documentation required above in this Section 3.14.040(K) (1), (2) and (3).

5. The City, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by the City in suspense pending the issuance by the City of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by the City to the qualifying grantee without the issuance of an RFP by the City. Any award of affordable housing funds or a housing assistance grant by the City shall subject the qualifying grantee of the award or grant to the oversight of the City and the MFA under this chapter and the Rules.

L. This revised ordinance has been submitted to MFA for review, along with necessary documentation, as provided in Rule 5.3, as applicable. MFA has reviewed and approved the form and terms of this chapter prior to adoption by the Commission.

(Ord. No. 1050, 12-5-2011)

3.14.050 Adoption of City Affordable Housing Plan.

A. The City of Hobbs recently adopted an Affordable Housing Plan by Resolution #5662 on April 18, 2011 to develop specific affordable housing programs and to further implement affordable housing strategies within the City, following review and approval of the plan by the MFA. The City's Affordable Housing Plan is therefore adopted herein by reference, and a summary of the goals, objectives and programs, programs from the plan follows herein:

City Affordable Housing Plan Programs.

Priority 1 Programs:

Land Banking.

Weatherization.

Income-restricted subsidized multi-family rental units.

City Housing Committee.

Monitoring of programs goals and housing conditions.

Housing Programs - City Budget Funding.

Waivers of fees.

Infrastructure assistance.

Waiver/Infrastructure Combined Programs.

Affordable Housing Incentive - New Subdivisions...Minimum 20 lots.

Priority 2 Programs:

Moderate income rental housing projects.

Weatherization and Rehabilitation Owner Occupied Housing.

Down payment assistance.

Priority 3 Programs:

Senior Housing Rental Projects.

Annexation policies.

Owner Occupied Home Rehab. grants and low interest loans.

First time homebuyer education.

Priority 4 Programs:

Consider Developing a housing code.

Diversify the rental product mix - private sector accessory units.

B. The City is therefore hereby authorized by this revised ordinance to create a budget for housing activities, to fund, carry out, develop agreements, operate programs and/or to do any other actions necessary to implement any and all activities as specified in the adopted City Plan, as determined in the best interests of the City of Hobbs.

C. From time to time following the adoption of this revised ordinance, the Commission may determine that it is necessary in order to further improve affordable housing programs to create a new housing assistance program, not previously addressed in the adopted City Affordable Housing Plan, and to create a budget for

such a new housing program(s), and to fund, carry out, develop agreements, operate programs and/or to do any other actions necessary to implement such new programs, as determined in the best interests of the City of Hobbs. The City is therefore hereby authorized by this revised ordinance to revise the City's Affordable Housing Plan and implement such new programs, pursuant to the New Mexico Affordable Housing Act.
(Ord. No. 1050, 12-5-2011)

3.14.060 Discrimination prohibited.

The development, construction, occupancy and operation of an affordable housing program or an affordable housing project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the City shall require compliance by all qualifying grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.
(Ord. No. 1050, 12-5-2011)

3.14.070 Administration.

The City shall administer any affordable housing programs in accordance with provisions of the Act, the Rules, this chapter, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The City, in establishing, funding and administering the affordable housing programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.
(Ord. No. 1050, 12-5-2011)

3.14.080 Termination.

The Commission may repeal this chapter and terminate the City's Affordable Housing Program and any or all contracts undertaken in its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the contract. If an ordinance or a contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.
(Ord. No. 1050, 12-5-2011)

Chapter 3.20 CITY PROCUREMENT POLICY*

Article 1. General Provisions

3.20.010 Title.

This chapter shall constitute and be referred to as the official "procurement policy" of the City. This chapter shall apply to all purchases of the City.
(Ord. No. 1080, 11-17-2014)

3.20.020 Purpose.

The objective of this policy is to guide City of Hobbs employees in the legal steps required to purchase quality materials and services needed at competitive prices in accordance with regulations set forth by the Hobbs City Commission.

1. Administration. The City of Hobbs Central Purchasing Office (CPO) staff are charged with the responsibility of procuring all materials and services effectively and efficiently. The City Manager and CPO shall have the responsibility and authority to insure that all provisions of the law and this policy are followed and shall be authorized to issue any supplement consistent with this policy deemed necessary to administer, manage or clarify this policy. Supplements shall be approved by the City Manager and copies of all supplements shall be attached to and made a part of this policy. The CPO shall be responsible for having the knowledge to insure that all provisions of this policy and all other purchasing concerns and activities of the City of Hobbs are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law. CPO personnel are available to answer any questions concerning the methods and policies regarding procurement of materials and services.
2. Scope. Except as otherwise provided, this procurement policy applies to every expenditure by the City of Hobbs for the procurement of items of tangible personal property, services and construction (13-1-30 NMSA 1978).
3. Consistency with State Procurement Code. The provisions of this policy are subject to change as per State Procurement Code revisions. Any revision

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***Editor's note—**Ord. No. 1080, adopted Nov. 17, 2014, repealed the former Ch. 3.20, §§ 3.20.010—3.20.070, and enacted a new Ch. 3.20 as set out in §§ 3.20.010—3.20.095 herein. The former Ch. 3.20 pertained to similar subject matter and derived from Ord. 972(part), 2007.

thereof that is inconsistent with the provisions of this policy shall control. All purchase users shall be given a copy of such revisions and notified that they are in effect.

4. Unauthorized Purchases. Any purchase which does not substantially comply with the provisions of this policy shall be considered an unauthorized purchase. Any individual initiating any unauthorized purchase may be subject to disciplinary action and may be held solely responsible for payment.

5. Approval of Unauthorized Purchases. All purchases determined to be an unauthorized purchase shall be considered by the City of Hobbs Finance Director, who will make a recommendation to the City Manager to approve or not approve an unauthorized purchase for payment. Unauthorized purchases shall not be processed for payment prior to City Manager approval. The City Manager will make a determination, based on the facts and circumstances of each case, of whether or not to pay for any unauthorized purchase.

6. Civil Penalties. Persons knowingly violating the State Procurement code, or this policy based on State law, may be subjected to a penalty not to exceed one thousand dollars ($1,000.00) per occurrence (13-1-196 NMSA 1978).

Items not specifically identified in this policy are regulated by Chapter 13 NMSA 1978.
(Ord. No. 1080, 11-17-2014)

3.20.030 Definitions.

"Authorized department employees" are designated and authorized by each department head to approve purchases within their department.

"Central purchasing office (CPO)" means the Finance Department and other departmental staff assigned or delegated the responsibility to ensure compliance with the City of Hobbs Procurement Policy for all purchases. The CPO personnel are responsible to verify that each expenditure is coded to the proper account, and that each expenditure is allowable considering the budget as adopted by the City Commission with amendments.

"Change order" means a written order signed and issued by a procurement officer directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.

"Construction management" and "construction manager." "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project. "Construction manager" means a person who acts as an agent for the City of Hobbs for construction management, for whom the City of Hobbs shall assume all the risks and responsibilities.

"Construction manager at risk" means a person who, pursuant to a contract with a governing body, provides the preconstruction services and construction management required in a construction manager at risk delivery method.

"Construction manager at risk delivery method" means a construction method for the City of Hobbs wherein a construction manager at risk provides a range of preconstruction services and construction management, including cost estimation and consultation regarding the design of the building project, preparation and coordination of bid packages, scheduling, cost control, value engineering and, while acting as the general contractor during construction, detailing the trade contractor scope of work, holding the trade contracts and other subcontracts, prequalifying the evaluating trade contractors and subcontractors and providing management and construction services, all at a guaranteed maximum price for which the construction manager at risk is financially responsible.

"Contract modification (amendment)" means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

"Cooperative procurement" means procurement conducted by or on behalf of more than one (1) state agency or local public body, or by a state agency or local public body with an external procurement unit. This also means purchasing agreements when the agreement has been evaluated through a formal bidding process. (Examples: Cooperative Educational Services, HGAC.)

"Exemptions" means any merchandise for resale is exempt from the bidding and request for proposal process.

"Indefinite quantity contract" means a contract which requires the contractor to furnish an indeterminate quantity of specified services, items of tangible personal property or construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices.

"Invitation for bids (IFB)" means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.

"Lease options and lease purchase options for tangible equipment" means an operating lease for acquiring tangible equipment and lease purchase options means a capital lease for acquiring tangible equipment. The City of Hobbs can enter into either an operating lease or a capital lease in acquiring tangible equipment. Thresholds still apply as to the total value of the leased asset. All lease agreements valued at under sixty thousand dollars ($60,000.00) must be signed by the City Manager or designee. All lease agreements with tangible equipment valued at over sixty thousand dollars ($60,000.00) must be processed through bidding, request for proposal, GSA, or cooperative purchasing and be approved by the City Commission.

"Multi-term contract" means a contract having a term longer than one (1) year.

"Public works contracts" means a construction project of the City of Hobbs, to construct, repair, alter or extend an improvement on real property or to improve real property owned, used or leased by the City of Hobbs.

"Purchase order" means the document issued by the central purchasing office which directs a contractor to delivery items of tangible personal property, services or construction pursuant to an existing contract.

"Purchase request" means the document by which a using department or division requests that a contract be obtained for a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting information.

"Request for proposal (RFP)" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Task order" means a written contract associated with a multi-award RFP or bid.

"Total cost" means total cost of the materials or services required, defined as all costs associated with the purchase, including shipping and any applicable taxes. (Ord. No. 1080, 11-17-2014)

3.20.040 Purchasing policy.

A. Certificates of Insurance. Vendors must provide a certificate of insurance to the CPO, or have a certificate on file with the City Clerk's office prior to any purchase that includes labor exceeding twenty thousand dollars ($20,000.00). The certificate

of insurance shall include all general liability, auto liability, and worker's compensation coverage as required by the CPO. Certificates of insurance may also be required for other purchases as deemed necessary.

B. Certification of Procurement Officer. The City of Hobbs is required to maintain a Certified Public Accountant within the Finance Department. The certification of a procurement officer is optional as it relates to the City of Hobbs Certified Public Accountant status.

C. Competitive Sealed Proposals (Request for Proposal). When the City of Hobbs requires competitive sealed proposals, the entire proposal document must be reviewed and approved by the department head originating the proposal, CPO, City Attorney, and City Manager. Additional department staff may be required to review the proposal document. Notice of proposals must clearly identify the City of Hobbs, Finance Department, 200 E. Broadway, Hobbs, NM 88240 as the location and time for submittal.

1. Public notices must be published at least ten (10) calendar days prior to the deadline for submission and posted to the City of Hobbs website (13-1-113 NMSA 1978). Proposals will not be opened prior to the scheduled deadline for submission. Proposals are not publicly opened.
2. After the deadline for submission, proposals will be evaluated based on the evaluation criteria set forth in the proposal document, by an evaluation committee designated by the City Manager or his designee (13-1-114 NMSA 1978).
3. Any negotiations will be conducted by the City Manager or his designee. Negotiations may be conducted with responsible offeror who submit proposals found to be reasonably likely to be selected for award (13-1-115 NMSA 1978, 1997 Repl.). The contents of any proposal shall not be disclosed so as to be available to competing offeror during the negotiation process (13-1-116 NMSA 1978).
4. After award, all proposals are subject to the Inspection of Public Records Act (14-2-1 through 14-2-12 NMSA 1978).
5. Proposals that are rejected and never awarded are not subject to the Inspection of Public Records Act (14-2-1 through 14-2-12 NMSA 1978).
6. In addition to the requirements above, proposals for the services of architects, engineers, landscape architects and surveyors must also comply with Sections 13-1-120 through 13-1-124 NMSA 1978 (Section 13-1-115 NMSA 1978).

7. If federal grant revenues are associated with a proposal, the proposal must contain language as it relates to the specific federal grant guidelines.

D. Construction Manager at Risk Delivery Method.

1. Construction Manager at Risk Delivery Method Authorized; Multiphase Selections Procedure.

   a. A construction manager at risk delivery method may be used when the City Commission or designee determines that it is in its interest to use that method on a specific project, provided that the construction manager at risk shall be selected pursuant to the provisions described of this section.

   b. The City Commission or designee shall form a selection committee of at least three (3) members with at least one (1) member being an architect or engineer. The selection committee shall develop an evaluation process, including a multiphase procedure consisting of three (3) steps. The three-step process shall consist of a request for qualifications, a request for proposals and an interview.

      A request for qualifications shall be published and shall include at a minimum the following:

      i. A statement of the minimum qualifications for the construction manager at risk, including the requirements for:

         (A) A contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act;

         (B) Registration pursuant to 13-4-13.1 NMSA 1978; and

         (C) A minimum bond capacity;

      ii. A statement of the scope of work to be performed, including:

         (A) The location of the project and the total amount of money available for the project;

         (B) A proposed schedule, including a deadline for submission of the statements of qualification;

         (C) Specific project requirements and deliverables;

         (D) The composition of the selection committee;

         (E) A description of the process the selection committee shall use to evaluate qualifications;

         (F) A proposed contract; and

(G) A detailed statement of the relationships and obligations of all parties, including the construction manager at risk, agents of the City Commission or designee, such as an architect or engineer;

iii. A verification of the maximum allowable construction cost; and

iv. A request for a proposal bond as required by Section 13-1-146 NMSA 1978.

c. The selection committee shall evaluate the statements of qualifications submitted and determine the offerors that qualify for the construction manager at risk. The committee shall issue a request for proposal to the offerors that qualify.

d. The selection committee shall issue a request for proposal and evaluate the proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA 1978 except that:

i. The request for proposals shall be sent only to those determined to be qualified;

ii. The selection committee shall evaluate the proposals and conduct interviews with up to three (3) of the highest-ranked offerors instead of negotiating with responsible offerors found to be reasonably likely to be selected.

e. After conducting interviews with the highest-ranked offerors and after considering the factors listed in this section, the selection committee shall recommend to the City Commission the offeror that will be most advantageous to the City of Hobbs. Should the City Commission or designee be unable to negotiate a satisfactory contract with the offeror considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that offeror shall be formally terminated. The City Commission or designee shall then undertake negotiations with the second most qualified offeror. Failing accord with the second most qualified offeror, the City Commission or designee shall formally terminate negotiations with the offeror. The City Commission or designee shall then undertake negotiations with the third most qualified offeror. Should the governing body or designee be unable to negotiate a contract with any of the offerors selected by the committee, additional offerors shall be ranked in order of their qualifications and the City of Hobbs or designee shall continue negotiations in accordance with this

section until a contract is signed with a qualified offeror or the procurement process is terminated and a new request for proposal is initiated.

f. In evaluating and ranking statements of qualifications, proposals and results of interviews, and in the final recommendations of a construction manager at risk, the selection committee shall consider:

i. The offeror's experience with construction of similar types of projects;

ii. The qualifications and experience of the offeror's personnel and consultants and the role of each in the project;

iii. The plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;

iv. The offeror's experience with the construction manager at risk method; and

v. All other selection criteria, as stated in the request for qualifications and the request for proposals.

g. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is terminated shall not be disclosed so as to be available to competing offerors.

h. After a contract is awarded, the selection committee shall make the names of all offerors and the names of all offerors selected for interview available for public inspection along with the selection committee's final ranking and evaluation scores. Offerors who were interviewed but not selected for contract award shall be notified in writing within fifteen days of the award.

2. Responsibilities of Construction Manager at Risk Following Award of Project.

a. The contract with the construction manager at risk shall specify:

i. The guaranteed maximum price; and

ii. The percentage of the guaranteed price that the construction manager at risk will perform with its own work force.

b. The construction manager at risk, in cooperation with the City Commission or designee, shall seek to develop subcontractor interest in the project and shall furnish to the City Commission or designee and any

architect or engineer representing the City Commission or designee a list of subcontractors who state in writing that they are a responsible bidder or a responsible offeror, including suppliers who are to furnish materials or equipment fabricated to a special design and from whom proposals or bids will be requested for each principal portion of the project. The governing body and its architect or engineer shall promptly reply in writing to the construction manager at risk if the governing body, architect or engineer knows of any objection to a listed subcontractor or supplier, provided that the receipt of the list shall not require the City Commission or designee, architect or engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City Commission or designee, architect or engineer later to object to or reject any proposed subcontractor or supplier.

c. The construction manager at risk shall:

i. Conduct pre-bid or pre-proposal meetings;

ii. Advise the City Commission or designee about bidding or proposals;

iii. Enter into contracts (only on City Commission approval); and

iv. Assist the City Commission or designee in evaluating submissions by responsible bidders and offerors.

E. Competitive Sealed Bids (Invitation for Bids). When the City of Hobbs requires sealed bids, the entire bid document must be reviewed and approved by the department head originating the bid, CPO, City Attorney, and City Manager. Additional department staff may be required to review the bid document. Notice of bids must clearly identify the City of Hobbs, Finance Department, 200 E. Broadway, Hobbs, NM 88240 as the location and time for submittal.

1. Public notice must be published at least ten (10) calendar days prior to the scheduled bid opening and posted to the City of Hobbs website (13-1-104 NMSA 1978). Bids will not be opened prior to the scheduled bid opening. All bids shall be opened publicly in the presence of one (1) or more witnesses (13-1-107 NMSA 1978). Award shall be made to the lowest responsible bidder. The City reserves the right to waive technicalities and accept the bid deemed to be in the best interest of the City.

2. Price negotiations can be conducted in order to avoid rejection of all bids only if the lowest responsible bid has otherwise qualified, and if there is no change

in the original terms and conditions, if the lowest bid was up to ten (10) percent higher than budgeted project funds. (Section 13-1-105 NMSA 1978.)

3. All bids are subject to the Inspection of Public Records Act (14-2-1 through 14-2-12 NMSA 1978).

4. Addendums to bids must be disclosed by the CPO within twenty-four (24) hours of prior bid opening date.

5. If federal grant revenues are associated with a bid, the bid must contain language as it relates to the specific federal grant guidelines.

F. Expenditure Categories. The following policies are to be applied by the CPO for all expenditures of the City of Hobbs. The application of the policy is based on the appropriate cost category that each purchase fits into; as well as the additional requirements for public works contracts, see Section 3.20.050; and miscellaneous purchases, see Section 3.20.060.

1. Category #1—Total Cost is Less Than Twenty Thousand Dollars ($20,000.00). Price quotes for these purchases are required; however, a good faith effort must be made to acquire the materials or services at the best obtainable price. All departments can purchase services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars ($20,000.00) by issuing a direct small purchase order. (Note: all purchase requisitions must have a quote before a conversion to a purchase order.) Purchases made in this category must obtain prior approval from an authorized department employee.

2. Category #2—Total Cost is More Than Twenty Thousand Dollars ($20,000.00), but Less Than Sixty Thousand Dollars ($60,000.00). Purchase of services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars ($60,000.00) are accomplished by obtaining three (3) written quotes. The quotes will be turned in to the CPO with a quote/purchase request form for issuance of a purchase order. Purchases made in this category must obtain prior approval from an authorized department employee.

3. Category #3—Total Cost is More Than Sixty Thousand Dollars ($60,000.00). Purchases of services, construction or items of tangible personal property in this category must be procured using formal sealed bids or competitive sealed proposals through the CPO. Only the CPO can distribute bid and proposal documents, maintain an approved bidder list, or issue any adden-

dum to bids or proposals. Purchases made in this category must obtain prior approval from the department head and approved by the City Manager and City Commission.

Purchases are not to be artificially divided to shift the classification of the purchase into an inappropriate expenditure category. Violation of this policy is subject to possible disciplinary action as defined in the personnel policy.

G. Freight Designations. The City of Hobbs will not accept title of any goods until they are received by an agent of the City of Hobbs (13-1-157, 13-1-158 NMSA 1978).

1. The shipping terms of all purchases made by the City of Hobbs must be F.O.B. destination or F.O.B. destination, freight prepaid by the vendor.
2. In most instances, the City of Hobbs will not prepay freight on any purchases. The CPO will make an assessment of the facts and circumstances, and determine if pre-payment of freight is the only available means of purchasing the goods in the best interest of the City of Hobbs.

H. Gross Receipts Tax. In accordance with state law, the City of Hobbs is responsible to pay New Mexico gross receipts tax on all payments for labor (7-9-1 through 7-9-85 NMSA 1978). Some materials for construction projects may also be subject to New Mexico gross receipts tax.

I. Indefinite Quantity Contract Purchases. Purchases of the same materials or services at various times during the year may require formal bids if the total cost for the fiscal year exceeds sixty thousand dollars ($60,000.00) for all departments. Examples of these types of purchases are fertilizer, asphalt, chlorine, lime, concrete, uniforms, etc.

1. The City of Hobbs may procure multiple indefinite quantity construction contracts pursuant to a price agreement for multiple projects under a single RFP, provided that the total amount of a contract and all renewals does not exceed two million dollars ($2,000,000.00) over four (4) years and the contract provides that any one (1) purchase order under the contract may not exceed five hundred thousand dollars ($500,000.00) (13-1-154.1-B).

J. Multi-Year Contracts. The City of Hobbs may enter into multi-year contracts that are in the best interest of the City of Hobbs as determined by the CPO.

1. The maximum length of any contract for tangible personal property, construction or services under sixty thousand dollars ($60,000.00) is not to exceed four (4) years; over sixty thousand dollars ($60,000.00) is not to exceed eight (8) years, including extensions and renewals.

2. The maximum length of any contract for professional services is not to exceed four (4) years with all extensions and renewals (13-1-150 NMSA 1978).
3. The terms of these multi-year contracts must be specified in the specifications of the bid or proposal (13-1-150 NMSA 1978).
4. Task orders can be issued as it relates to multi-award bids and proposals. Task orders below sixty thousand dollars ($60,000.00) must obtain prior approval from the department head, CPO and City Manager. Task orders exceeding sixty thousand dollars ($60,000.00) must obtain prior approval from the department head and approved by the City Manager and City Commission. In determining the contractor for multi-award task orders, the department head will make the recommendation based on the best interest of the City.
5. The City of Hobbs may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based RFP; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed two million dollars ($2,000,000.00) over four (4) years and that a single contract, including any renewals, does not exceed five hundred thousand dollars ($500,000.00) (13-1-154.1-A).

K. Professional Services Expenditures. "Professional services" means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, lawyers, psychologists, planners, researchers and persons or businesses providing similar services (13-1-76 NMSA 1978).

Professional services are procured at the direction of the City Manager for contracts under sixty thousand dollars ($60,000.00), including for the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations. Contracts over sixty thousand dollars ($60,000.00) are procured at the direction of the City Manager with City Commission approval, and are subject to the competitive sealed proposal requirements. The CPO will issue a contract after documentation of the appropriate approval is delivered to the CPO.

Note: The City of Hobbs is subject to 2.22 NMAC State Audit Rule in contracting for the audit services.

L. Cooperative Purchasing Agreements. "Cooperative procurement" means procurement conducted by or on behalf of more than one (1) state agency or local public body, or by a state agency or local public body with an external procurement unit. Purchases of services, construction or items of tangible personal property can be made through the use of a "cooperative purchase agreement." The cooperative agency agreement must be approved by the City Commission. If multiple purchasing agreements exists with vendors for a project, and the project exceeds two hundred thousand dollars ($200,000.00), the department head must attempt and obtain multiple quotes. Purchases exceeding sixty thousand dollars ($60,000.00) must obtain prior approval from the department head and approved by the City Manager and City Commission.

M. Amendments to Contracts. Any amendment exceeding sixty thousand dollars ($60,000.00) must obtain prior approval from the department head and approved by the City Manager and City Commission.

N. Change Orders. Any change order on a contract exceeding sixty thousand dollars ($60,000.00) must obtain prior approval from the department head and approved by the City Manager and City Commission.

O. Purchases from Elected Officials or Employees. To avoid any possible appearance of conflicts of interest, elected officials, employees, or their immediate families, i.e., spouse, children, parents, brothers or sisters (13-1-62 NMSA 1978) can not participate in a purchase of goods or services in which they have a financial interest (13-1-190 NMSA 1978). A financial interest is defined as "holding a position in a business as officer, director, trustee or partner or holding any position in management; or ownership of more than five (5) percent interest in a business" (13-1-57 NMSA 1978). Please see City of Hobbs Related Party Policy (City of Hobbs Resolution No. 5329) and the State of New Mexico Governmental Conduct and Ethics Policy.

P. Quotations. When the City of Hobbs Procurement Policy requires quotations, either written or oral, all vendors must be given the same information concerning the material or service required and any other specifications. Each vendor contacted must be given an equal opportunity to supply the material or service. If an addendum to a request for a quotation is required, it must be provided to all vendors that were asked to respond.

Q. Resident Bidders' Preference. Vendors registered with the State of New Mexico who have received a resident bidder's preference number are eligible for a five (5) percent preference in the evaluation of their bid price (13-1-21 NMSA 1978).

This five (5) percent resident bidders' preference is applicable to formal sealed bids and proposals. The resident bidders' preference does not apply to the expenditure of federal funds (13-1-21 NMSA 1978). The CPO is responsible for the verification of the resident bidders' preference number with the State of New Mexico.

R. Resident Veteran Business Preference. Vendors registered with the State of New Mexico who have received a resident veteran business preference number are eligible for the follows bidder preference (13-1-21). (Note: The resident veteran business preference is applicable to formal sealed bids and proposals.)

1. Resident veteran business with annual revenues of one million dollars ($1,000,000.00) or less to be ten (10) percent lower than the bid actually submitted.
2. Resident veteran business with annual revenues of more than one million dollars ($1,000,000.00) but less than five million dollars ($5,000,000.00) to be eight (8) percent lower than the bid actually submitted.
3. Resident veteran business with annual revenues of five million dollars ($5,000,000.00) or more to be seven (7) percent lower than the bid actually submitted.

The resident veteran business preference does not apply to the expenditure of federal funds (13-1-21 NMSA 1978). The preference of this section shall be limited, in any calendar year, to an aggregate of ten million dollars ($10,000,000.00) in purchases by the City of Hobbs from all resident veteran businesses receiving preference (13-1-21, G). The CPO is responsible for the verification of the resident veteran business preference number with the State of New Mexico.

S. Sole Source and Emergency Purchases.

1. "Sole source purchases" are defined as a purchase for which there is only one (1) known source for the required service, construction or item of tangible personal property (13-1-126 NMSA 1978). At least thirty (30) days before a sole source contract is awarded, the CPO or designee of either shall post notice of the intent to award a sole source contract on its web site and forwarded to the State of New Mexico Department of Information Technology for posting on the sunshine portal. The notice shall identify at a minimum:
   a. The parties to the proposed contract;
   b. The nature and quantity of the service, construction or item of tangible personal property being contracted for; and

c. The contract amount.

Any qualified potential contractor who was not awarded a sole source contract may protest to the CPO. The protest shall be submitted in writing within fifteen (15) calendar days of the notice of intent to award a contract being posted by the CPO (13-1-126.1, A, B, 13-1-128).

2. Emergency purchases are valid only when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions (13-1-127 NMSA 1978). An emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

   a. The functioning of government;

   b. The preservation or protection of property; or

   c. The health or safety of any person (13-1-127 NMSA 1978).

3. Every effort should be made to purchase competitively if the situation allows (13-1-127 NMSA 1978). A written determination of the basis for the emergency procurement and for the selection of the particular contractor shall be included in the procurement file (13-1-128 NMSA 1978).

4. Written documentation of these types of purchases must be submitted to the CPO by the department head making the purchase (13-1-128 NMSA 1978). This documentation must be maintained for a minimum of three (3) years (13-1-128 NMSA 1978).

5. Within three (3) business days of awarding an emergency procurement contract, the CPO or designee of either shall post notice of the intent to award the emergency purchase contract on its web site and forwarded to the State of New Mexico Department of Information Technology for posting on the sunshine portal. The notice shall identify at a minimum:

   a. The parties to the proposed contract;

   b. The nature and quantity of the service, construction or item of tangible personal property being contracted for; and

   c. The contract amount.

T. State of new Mexico Purchasing Contracts and GSA Contracts. The CPO may make purchases utilizing any State of New Mexico purchasing contract, or any GSA contract deemed to be in the best interest of the City of Hobbs. The CPO is not

required to obtain quotes or formal sealed bids for purchases under these contracts regardless of the total cost (13-1-129 NMSA 1978), but may utilize these contracts as one (1) of the price quotes when quotations are required.

1. When using GSA contracts, the contractor (not the distributor) must indicate in writing a willingness to extend to the City of Hobbs the terms and conditions specified in the GSA contract (13-1-129 NMSA 1978).
2. The CPO must have a complete copy of the State contract or GSA contract (13-1-129 NMSA 1978). The CPO will verify the terms of the contract as well as the effective date of the contract prior to issuance of a purchase order.

(Ord. No. 1080, 11-17-2014; Ord. No. 1084, 5-19-2015)

3.20.050 Public works contracts.

A. Public works contracts are subject to the policies detailed above as well as the following additional procedures.

B. All contracts of more than sixty thousand dollars ($60,000.00) must contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics as determined by State of New Mexico. Contractors must pay the laborers at least weekly, on the job site. The wage scale must be prominently posted by the contractor at the work site (13-4-11 NMSA 1978). If the City of Hobbs is utilizing a cooperative purchase agreement, the determination of wage rates for the agreement must be forwarded and filed with the City of Hobbs CPO. Non-submittal of wage rate determinations from the cooperative service agency could result in a delay of payment.

C. For all contracts of more than sixty thousand dollars ($60,000.00), the City of Hobbs must receive a performance bond from the contractor equal to one hundred (100) percent of the contract price, and a payment bond from the contractor equal to one hundred (100) percent of the contract price.

D. The CPO can require performance bonds and payment bonds on any public works contract.

E. The City of Hobbs may require a retainage of no greater than five (5) percent be held from each partial payment to the contractor until the job is completed.

F. Any vendor submitting a bid for a public works construction project more than five thousand dollars ($5,000.00) shall submit a subcontractor list of who will perform work or labor or render service. The subcontractor's list shall give in detail the nature of the work which will be done by each subcontractor. Any bid submitted

by any person which fails to comply with this policy will be considered a non-responsive bid and will not be accepted by the City of Hobbs (13-4-34 NMSA 1978).

G. In order to submit a bid, proposal or to be considered for award of any portion of a public works project greater than sixty thousand dollars ($60,000.00), the public works project is subject to the Public Works Minimum Wage Act. The contractor, serving as a prime contractor or not, shall be registered with the labor and industrial division of the labor department. The City shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

H. The City of Hobbs may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based RFP; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed two million dollars ($2,000,000.00) over four (4) years and that a single contract, including any renewals, does not exceed five hundred thousand dollars ($500,000.00) (13-1-154.1-A).
(Ord. No. 1080, 11-17-2014)

3.20.060 Miscellaneous expenditures.

A. Some miscellaneous expenditures do not lend themselves to classification as services or materials, and are not handled in the same way as most purchases.

B. Travel expenditures, meal reimbursements, postage, dues/subscriptions and registration fees are several examples.

C. Check requests can be utilized for these expenditures. It is encouraged to use purchase orders whenever necessary to assure budgeted funds are available.

D. Documentation for the expenditure should be attached to the request, and submitted directly to the Finance Department for payment.
(Ord. No. 1080, 11-17-2014)

3.20.070 Fixed asset policy.

A. Capital outlay items are budgeted annually and approved by the City Commissioners.

B. Purchases from funds budgeted as a capital outlay must have an Inventory Data Sheet attached when submitted to the Finance Department for payment.

C. All capital expenditures are accounted for in a fixed asset inventory and not charged to an operating expense account.

D. Generally, expenditures for items with an original cost of more than five thousand dollars ($5,000.00), and an estimated life of more than one (1) year, are classified as fixed assets.

E. Generally, expenditures of less than five thousand dollars ($5,000.00) are charged to the current year's operating expenses.

F. Repairs should be charged to an operating expense account.

G. Purchases for shrubbery, trees, sod, fencing, carpeting, roofing, plumbing, etc. should not be considered fixed assets.

H. Installation, engineering services, architectural services and repairs extending the life of the asset should be charged and budgeted directly to the fixed asset as to assure proper value of the fixed asset.

I. Disposition of any item requires prior approval from the department head (13-6-1 NMSA 1978), and completion of an Inventory Data Sheet—Transfers and Deletions.

J. Each department head is responsible for maintaining an accurate inventory of all fixed assets assigned to their department.

K. The results of the physical inventory shall be recorded in a written inventory report, certified as to correctness and signed by the governing authority of the agency (NMAC 2.20.1.16.E).
(Ord. No. 1080, 11-17-2014)

3.20.075 Budgeting policy/procedures.

A. In order to comply with Section 6-6-2 NMSA 1978, local governments have the following deadlines to adhere to:

June 1	Budget (preliminary) requests are due to New Mexico Local Government Division

July 31	Budget (final) final day to submit budget adjustment resolutions for current fiscal year
	Final budget requests for next fiscal year, including the approving resolution due at New Mexico Local Government Division
	Fiscal year-end financial reports due at New Mexico Local Government Division

The New Mexico Local Government Division requires the City of Hobbs to establish and maintain a cash balance in the general fund equal to one-twelfth ($^1/_{12}$) of the budgeted expenditures at fiscal year-end (June 30th).

The City of Hobbs will hold a minimum of one (1) budget public work session prior to the first Commission meeting in May.

A portion of the general fund cash balance can be reserved in a separate reserve fund by direct action of the City of Hobbs Commission. The action to set up a reserve must specify the purpose, the amount and the expected date for its use. Reserves which remain unused for a period of three (3) years will revert to the general fund.

B. Budget Fund Establishment.

1. General Fund. Accounts for all financial resources, except those required to be accounted for in another fund.

2. Special Revenue Fund. Accounts for the proceeds of specific revenue sources that are legally restricted to expenditure for specific purposes.

3. Capital Projects Fund. Accounts for financial resources to be used for the acquisition or construction of major capital facilities.

4. Debt Service Fund. Accounts for the accumulation of resources for the payment of general obligation and long-term debt principal and interest.

5. Proprietary Fund. Accounts for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the City Commission is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges.

6. Internal Service Fund. Accounts for the financing of goods or services provided by one (1) department or agency to other departments or agencies of the City of Hobbs on a cost-reimbursement basis.

7. Fiduciary Fund (Trust and Agency). Accounts for assets held by the City of Hobbs in a trustee capacity or as an agent for individuals, private organizations, or other governmental units, and/or other funds.

C. Adjustments and Reclassifications.

1. Definitions.

"Budget adjustment" means any revenue or expenditure adjustment made after June 1, increasing or decreasing budgeted cash fund balance.

"Budget reclassification" means any revenue or expenditure reclassification made after June 1, having no effect on budgeted cash fund balance.

2. Budget Fund Adjustments.

a. New Mexico Local Government Division approval is required to adjust the budget after the budget is adopted. The following list establishes the criteria:

i. Meeting date that the City Commission approved the adjustments;

ii. Fund or funds affected by the adjustments;

iii. Department affected by the adjustments;

iv. The dollar amount of the adjustment and the available resources to fund the adjustment;

v. A brief explanation stating why the adjustment is necessary.

b. The signature of the Mayor, Commission Chair or designate (Manager, Finance Officer, etc.) with attestation by the Municipal Clerk must be provided.

c. Budget adjustments requiring Local Government Division approval include:

i. Any budget increases;

ii. Any transfer of budget between funds;

iii. Transfers of cash, both permanent and temporary, between funds;

iv. Any combination of the above.

d. All budget increases, transfers (permanent and temporary) must be approved by the New Mexico Local Government Division prior to making the actual increase or transfer.

e. Budget increases or transfers from the general fund requiring the use of cash balances may not be approved if the result reduces estimated ending cash balance below LGD requirements.

f. Quarterly budget review establishes the second Commission meeting at the end of each quarter. The quarterly review requires the City of Hobbs to examine fiscal performance and make budget adjustments, if needed. The examination should include a comparison of revenues and expenditures to date to the approved budget.

3. [Budget Reclassification.]

a. The City of Hobbs establishes budget categories within the funds and departments as the following:

Revenue—(Object code beginning with a 30)

Personnel and Benefits—(Object code beginning with a 41)

Operating—(Object code beginning with a 42)

Capital Assets (Tangible Equipment)—(Object code beginning with a 43)

Capital Projects—(Object code beginning with a 44, includes a project number)

Debt Service—(Object code beginning with a 46)

b. All budget reclassifications must be approved by the City Manager or Finance Director. Any budget reclassifications must be between budget categories. (Example: reclassifications from personnel to personnel, reclassifications from operating to operating, reclassifications from capital assets to capital assets.) The budgetary cash fiscal impact on reclassifications should be zero with ratification of those adjustments at the quarterly budget review Commission meeting.

c. Any budget adjustment reducing the budgeted cash by sixty thousand dollars ($60,000.00), Commission approval must be obtained prior to the adjustment being recorded.

d. Budget adjustments that do not reduce budgeted cash balance by sixty thousand dollars ($60,000.00), ratification of the adjustment at the quarterly budget review must be approved by the City Commission.

e. End of the year fiscal year budget adjustments must be approved by the City Commission and submitted for approval to the Local Government Division by July 31st.

D. Procedures for Submitting Fiscal Year Preliminary Budget.

1. Salary and Benefits.

a. Finance Department will create the fiscal year budget file (in the MUNIS system) in the second week in December for the upcoming fiscal budget year.

b. Finance Department will create a point in time, personnel projection file, in the MUNIS system prior to January 31st.

c. Any added departments must be approved by Finance Director prior to January 31st.

d. Department heads will submit to the Human Resource Department by January 31st any added positions or reclassifications of personnel for the upcoming fiscal year budget.

e. The Human Resource Department will update the personnel projection file with changes submitted by department heads by the second week in February.

f. Once the projection file is updated, the salary projection will be executed and posted no later than March 1. The final projection must be compiled in the budget book by FTE by department, with salary amounts and compared to prior year. (Note: State of New Mexico Local Government Division requires FTE counts and salary amounts with an average increase or decrease from prior budget year.)

g. Benefit projections will be determined by City Management and updated in the salary/benefit projection prior to March 1st.

2. Operating.

a. Finance Department will create the fiscal year budget file (in the MUNIS system) in the second week in December for the upcoming fiscal year budget year.

b. Departments must input detailed line item budgets (within the MUNIS system) no later than March 1st. (Note: detail input is required with justifications.)

c. Any additions of departments or object codes must be approved by Finance Director prior to March 1st.

3. Capital Assets and Capital Projects.

a. Finance Department will create the fiscal year budget file (in the MUNIS system) in the second week in December for the upcoming fiscal year budget year.

b. Departments adding new fiscal year budgeted projects must submit those projects to Finance no later than March 1st. Any grant revenues associated with new projects also needs to be submitted to Finance. (Note: project numbers need to be added within the MUNIS system.)

c. Departments must input detailed line item capital asset and capital project budgets no later than March 1st. (Note: detail input is required with justifications.)

d. Existing budgeted projects will be carried over into the next budget year. These existing budgeted should not be re-budgeted in the preliminary budget process unless an enhancement or addition needs to be made to the project after July 1st.

4. Finance Department will project, an input revenues as it relates to the general fund, special revenue funds, capital asset funds, debt service funds, enterprise funds and fiduciary/trust funds by March 1st.

5. After March 1st, the Finance Department will roll all components of the preliminary budget to the City Manager for review. The City Manager may establish departmental meetings during this review process.

6. Once City Manager review is complete, the Finance Department will compile preliminary fiscal year budget and create a projected budgeted cash fund balance report. The minimum general fund cash reserve as a percentage of general fund revenues shall be thirty (30) percent. (Note: City Commission reserves the right to set the reserve percentage from fiscal year to fiscal year). The State of New Mexico Local Government Division requires one-twelfth ($^1/_{12}$) (8.33%) of general fund budgeted expenditures as the cash reserve.

7. The City of Hobbs preliminary budget will hold two (2) public meetings regarding the preliminary budget. The two (2) public meetings are as follows:

1) Preliminary budget work session discussions, and

2) Final adoption of fiscal year preliminary budget. The timeline for work session is the second Commission meeting in April and the first Commission meeting in May.

8. Once the preliminary budget is adopted, the budget will be cross walked to the required DFA forms and submitted prior to June 1st.

(Ord. No. 1080, 11-17-2014)

3.20.080 Contract policy/procedures.

A. Contract Background. Typically, the City of Hobbs requires contracts for any labor/services over twenty thousand dollars ($20,000.00). There are some cases that might require a contract under twenty thousand dollars ($20,000.00) if the department and vendor need to detail out certain attributes that would otherwise not reflect on the purchase order (examples of these are timelines, quantity amounts, methods of payment, scope of work, expectations etc.). Contracts are not to be artificially divided to shift the classification of the purchase into an inappropriate expenditure category. In obtaining a contract the following procedures must be followed as to make your department and vendor, an enjoyable experience with the Finance Department.

B. Procedure.

1. Determine if labor or services are over the twenty thousand dollar ($20,000.00) threshold.
2. If over the twenty thousand dollar ($20,000.00) threshold, three (3) written quotes (use quote/purchase request form) must be obtained. (Note: professional services are exempt from three (3) written quotes but cannot exceed sixty thousand dollars ($60,000.00). All professional service contracts below sixty thousand dollars ($60,000.00) must be signed by the City Manager.)
3. Obtain an electronic version contract on the City's intranet page or contact Finance for a pro-forma contract. (Note: the contract pro forma version has been vetted through the Finance Department and Legal Department. Any other contract form used will be subject to additional review by the Legal/ Finance Department.)
4. Update the contract with the vendor, scope of service, amounts, quantity or any other language is deemed necessary for clarification.
5. Check budget for available funds and update contract with coding instructions.

6. Contract needs to be signed by the department head, Finance Director and vendor before work is to begin. If a contract is obtained through a bidding process or RFP process, then the Mayor must sign contract.
7. Once signatures are obtained, the contract must be forwarded to Purchasing (along with the three (3) written quotes) for encumbering into the MUNIS system. This assures that the City of Hobbs has the most current status of contractual liabilities owed to vendors.
8. Invoices associated with the contracts will be submitted to accounts payable and disseminated to the department who issued the contract.
9. The department head will sign off on the invoice verifying the work was complete and satisfactory. The department head will then forward to accounts payable for payment. (Note: all invoices must be paid within fifteen (15) days of receipt of payment per ordinance.)
10. Duration—Review—Renewal. All contracts will be drafted for a one-year term with a three-year option to re-new (when applicable). Before the contract year, a reminder notice will be sent by the Finance Department to the department who initiated the contract for review. The department will review and update any terms, scope of services, or any other terms set in the initial contract. Once reviewed, the department will sign the contract reminder notice along with the vendor. This constitutes exercising one of the three-year options. Any significant changes to the initial contract will need to be reflected in an amendment to the initial contract, identifying any updates. The amended contract must be signed by all parties listed in the initial contract.
11. Employment Contracts vs. Contracts of Independent Contractors. All contracts will be subject to review by the City Manager, Personnel Director and Finance Director as it relates to determining whether a contract is considered to be an employment contract or a contract with an independent contractor. (IRS rules apply) Employment contracts will be reviewed annually by the City Manager during his/her evaluation process for the employee. Contracts with an independent contractor will follow the review procedure mentioned in procedure 9 Section VIII of procedures for obtaining a contract.

(Ord. No. 1080, 11-17-2014; Ord. No. 1084, 5-19-2015)

3.20.085 Purchase order policy/procedure.

A. Purchase Order Background. The City of Hobbs requires a purchase order for any tangible property, labor, and services under twenty thousand dollars ($20,000.00). A purchase order can also be obtained for any tangible property over twenty

thousand dollars ($20,000.00) and under sixty thousand dollars ($60,000.00); however, three (3) written quotes (use quote/purchase request form) must be obtained. (Note: in obtaining three (3) quotes, the lowest quote does not have to be lowest, but a statement as to why lowest quote was not chosen.) A purchase order can be obtained for tangible property or indefinite quantity amounts over sixty thousand dollars ($60,000.00), but a formal bid, sole source, emergency request, GSA, cooperative purchasing (see ordinance policy) or formal RFP process would have to occur first. Any purchase orders over twenty thousand dollars ($20,000.00) needs to be created in the Finance Department—Purchasing. It is noted the City of Hobbs uses a purchase order system for two (2) reasons: 1) that authorization of public funds has occurred before the purchase, and 2) only authorized personnel from the City of Hobbs can spend public funds. The purchase order system also tracks by department, checks availability of funds and contractually encumbers public funds. The City of Hobbs uses an electronic report and planning system (MUNIS) to obtain a purchase order. The steps involved in the City of Hobbs electronic procurement process is first, creating a requisition, converting to a purchase order, receiving an invoice, department receiving the item indicating the

product or service was adequate and then a check is processed. Purchase orders are not to be artificially divided to shift the classification of the purchase into an inappropriate expenditure category. (Example: creating purchase orders to one (1) vendor, same budget line item, three (3) different times at ten thousand dollars ($10,000.00) per PO, making the total purchase to the vendor thirty thousand dollars ($30,000.00). This purchase should have obtained three (3) written quotes since total purchase to one (1) vendor exceeded twenty thousand dollars ($20,000.00). In the prior example, if total purchases exceeded sixty thousand dollars ($60,000.00), then a formal bid or RFP process would need to followed.) In obtaining a purchase order, the following procedures must be followed as to make your department and vendor, an enjoyable experience with the Finance Department.

B. Procedure—Requisition to Purchase Order.

1. Complete a requisition entry in MUNIS. Please include a detailed description of the item or items purchased in the line detail field.
2. All requisitions must have documentation (such as a quote or an estimate) attached to justify the price, timeline, and/or quantity needed).
3. Release the requisition in MUNIS so that it can be processed through the workflow in MUNIS.
4. Once all approvals have been made, the requisition will be converted into a purchase order.
5. The originator will receive two (2) copies of the purchase order by email—the department copy and the vendor copy. Please provide your vendor with the vendor copy of the purchase order.

C. Procedure—Receiving on a Purchase Order.

1. Per the purchase order, the invoice should be received by the Finance Department.
2. Finance will email a copy of the invoice to the department for authorization to pay.
3. Please receive using the MUNIS receiving module any items on the invoice you have physically received.
   a. Please contact Finance as soon as possible if you have received an invoice from us and you do not have your merchandise.
4. If you have more than one (1) line item on your purchase order, please ensure that you are receiving on the correct line item.

5. Please do not put a quantity in your receiving record— only a cost.

6. Please utilize the comments section to communicate any necessary information regarding your invoice.

   a. This is especially useful if you have multiple invoices paying against the same line on your PO. Please provide the invoice number in the comments section for multiple invoices.

7. Please receive one (1) invoice at a time in the receiving record.

D. Checks are written once per week (Thursday afternoon). All purchase orders, invoices and receiving must be done by five p.m. Tuesday for payment to the vendor on Thursday of that week. (Note: during holidays, the check run may be changed.) (Ord. No. 1080, 11-17-2014)

3.20.090 Request for proposals/procedure.

A. RFP (Request for Proposals) Background. Request for proposals follow the same procedure noted in the State of New Mexico Procurement Code. RFPs are done when other factors need to be considered for tangible property, capital projects, professional services and other services. This section of RFP does not fully encompass the process when public works projects are being considered for an RFP. This section details out the basic process, through RFP, in procuring services exceeding sixty thousand dollars ($60,000.00).

B. Procedure for Creating an RFP.

1. Obtain pro forma RFP form on the City's intranet page or request from purchasing an electronic copy of the pro forma request for proposal.

2. Once the department has a working template of the RFP. The following items need to be either updated or changed.

   a. The proposal number (obtain through purchasing).

   b. The specific timeline from publishing to opening of the RFP. The date, time and place of opening (minimum time from publication to opening is ten (10) business days). Also, note that all RFPs need to be evaluated and submitted to the City Commission for approval.

   c. A detail description of the scope of service needing to be performed.

d. Evaluation criteria ranked on a grading scale or point scale. (Examples: cost forty (40) percent— timeline twenty (20) percent— personnel experience on similar services twenty (20) percent— responsiveness to RFP ten (10) percent.)

e. Resident preferences (five (5) percent) and veteran's preferences (from seven (7) percent to ten (10) percent) need to be included as an evaluation criteria factor.

f. A cost sheet needs to be included in the RFP if cost is an evaluation factor.

g. A campaign contribution form needs to be included in the RFP.

3. The department will submit a proposer list to Purchasing for filing and submission of RFP to prospective proposers.

4. Once the department has updated and completed the RFP, the department will submit to Purchasing for review. Purchasing will then make any suggestions or corrections before a check route is established. (A check route is a sign off sheet in order for complete compliance review.) Purchasing creates a check route, with authorized signatures, in the following order:

   a. Author of the RFP.

   b. Department head.

   c. Purchasing.

   d. Finance Director.

   e. Legal.

   f. City Manager.

5. The check route needs to contain the budgeted funds available and the account number the RFP is budgeted in.

6. When the check route is complete, the City Manager shall sign the notice to publish. The RFP publication will also be submitted to IT for publication on the City of Hobbs website.

7. Any addendums to the RFP must be submitted twenty-four (24) hours in advance.

C. Procedure for Evaluating an RFP. Specific guidelines in evaluating an RFP are detailed in the State of New Mexico Procurement Code. The following procedures establish a benchmark for departments in completing the RFP process:

1. Finance Department will receive all RFPs and time/date stamp.
2. Finance Department will compile an evaluation form specific to the criteria established in the formal RFP.
3. The department will establish an evaluation committee with a minimum of three (3) evaluators. At least one (1) member needs to be independent of the RFP origination department. (Refer to New Mexico State Procurement Code for specific procedures.)
4. The evaluation team will score the RFP and submit scoring sheets to the Finance Department. An average score sheet will be calculated and submitted to the Finance Department as well. Any possible proposers deemed non-responsive must be vetted through the Finance Department and Legal Department.
5. The RFP origination department will create a staff summary and start negotiations of a contract agreement (see contract procedure). If contract negotiations fail with the highest rated proposer, the department will begin negotiations with the second highest proposer. (See detailed RFP negotiations in New Mexico State Procurement Code.) The staff summary, average scoring sheet and contract (when necessary) will be submitted to the City Commission for approval.
6. Upon City Commission approval, Purchasing will submit an award letter to the highest rated proposer and notify (in writing) the non-successful proposers.
7. Once all contract documents are signed, the department will submit to Purchasing a copy of the contract and enter the document into the MUNIS system. All contracts that are processed through the RFP process must be signed by the Mayor.

(Ord. No. 1080, 11-17-2014)

3.20.095 Bid policy/procedures.

A. Bid Background. Bids follow the same procedure noted in the State of New Mexico Procurement Code. Bids are done when only costs need to be considered for tangible property, capital projects, and other services deemed necessary for the

City of Hobbs. This section of bidding does not fully encompass the process when public works projects are being considered for a bid. It is also noted that a construction manager assigned to assist the City of Hobbs, through a prior RFP, can process bids, evaluate and make recommendations to the City of Hobbs Commission or designee. This section details out the basic process, through bidding, in procuring tangible property, capital projects and other services exceeding sixty thousand dollars ($60,000.00).

B. Procedure for Creating a BID.

1. Obtain pro forma bid form on the City's intranet page or request from Purchasing an electronic copy of the pro forma bid document.
2. Once the department has a working template of the bid document, the following items need to be either updated or changed:
   a. The bid number (obtain through Purchasing).
   b. The specific timeline from publishing to opening of the bid. The date, time and place of opening (minimum time from publication to opening is ten (10) business days). Also, note that all bids need to be evaluated and submitted to the City Commission for approval.
   c. A detail description of the tangible property, capital project or other service.
   d. Resident preferences (five (5) percent) and veteran's preferences (from seven (7) percent to ten (10) percent) need to be included as a cost factor.
   e. A cost sheet needs to be included in the bid document.
   f. A campaign contribution form needs to be included in the bid document.
3. The department will submit a bidders list to Purchasing for filing and submission of bid to prospective bidders.
4. Once the department has updated and completed the bid document, the department will submit to Purchasing for review. Purchasing will then make any suggestions or corrections before a check route is established. (A check route is a sign off sheet in order for complete compliance review.) Purchasing creates a check route, with authorized signatures, in the following order:
   a. Author of the bid document.
   b. Department head.
   c. Purchasing.

d. Finance Director.

e. Legal.

f. City Manager.

5. The check route needs to contain the budgeted funds available and the account number the bid is budgeted in.

6. When the check route is complete, the City Manager shall sign the notice to publish. The bid document will also be submitted to IT for publication on the City of Hobbs website.

7. Any addendums to the bid document must be done twenty-four (24) hours in advance.

C. Procedure for Evaluating a Bid. Specific guidelines in evaluating a bid are detailed in the State of New Mexico Procurement Code. It is also noted that if the City of Hobbs is contracting with a construction manager then the following process does not apply. The following procedures establish a benchmark for departments in completing the bid process (without a construction manager):

1. Finance Department will receive all bids and time/date stamp.

2. Finance Department will compile an evaluation form specific to the cost established in the formal bid process.

3. All bids will be publicly opened and read out loud.

4. The bid will be summarized and checked for completeness. Any possible bidders deemed non-responsive must be vetted through the Finance Department and Legal Department.

5. The bid origination department will create a staff summary and create a contract agreement (see contract procedure). The staff summary, bidding sheet and contract (when necessary) will be submitted to the City Commission for approval.

6. Upon City Commission approval, purchasing will submit an award letter to the apparent low bidder and notify (in writing) the non-successful bidders.

7. Once all contract documents are signed, the department will submit to purchasing a copy of the contract and enter the document into the MUNIS system. All contracts that are processed through the bidding process must be signed by the Mayor.

(Ord. No. 1080, 11-17-2014)

Chapter 3.25 CAPPING AND FUNDING SOCIAL SERVICE AGENCIES

3.25.010 Capping the Annual Funding of Social Service Agencies.

The total annual funding by the City of Hobbs of all social service agencies shall not exceed the sum of four hundred thousand dollars ($400,000.00) from the General Fund. (Ord. No. 1043, 4-4-2011)
(Ord. No. 1086, 6-1-2015)

3.25.020 Capping the Annual Number of Social Service Agencies.

The total annual number of social service agencies funded by the City of Hobbs shall not exceed twenty (20). (Ord. No. 1043, 4-4-2011)
(Ord. No. 1086, 6-1-2015)

3.25.025 Special projects.

The City Commission may approve capital projects with social service agencies, on a case-by-case basis to be funded through a professional services agreement. Said special projects shall be approved at an open commission meeting. Special projects shall not be subject to the limitations of Sections 3.25.010 and 3.25.020 herein.
(Ord. No. 1056, 11-5-2012 ; Ord. No. 1086, 6-1-2015)

3.25.030 Economic Development and Marketing Entities.

The following entities shall be exempt from the capping requirements of Sections 3.25.010 and 3.25.020 of this Code:

A. Economic Development Corporation of Lea County;

Hobbs Chamber of Commerce;

Hobbs Hispano Chamber of Commerce; and

African American Chamber of Commerce, Hobbs. (Ord. No. 1043, 4-4-2011)
(Ord. No. 1086, 6-1-2015)

Title 4

RESERVED

Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04 BUSINESS REGISTRATION*

5.04.010 Short title.

This chapter may be cited as the "Business Registration Ordinance." It is declared that the registration of each place of business conducted within the City as set out in this chapter and as authorized by Section 3-38-3 of the New Mexico Statutes Annotated is conducive to the promotion of the health and general welfare of the City. (Ord. 930 (part), 2004)

5.04.020 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Engaging in business" means persons operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the purpose of profit and who are required to obtain a State taxpayer identification number.

"Mobile business activity" means a person possessing a valid business registration engaging in business within the City but at a location which is not their place of business.

"Person" means any individual, male or female, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in a business, profession, occupation, trade or pursuit.

"Place of business" means a location where business is primarily conducted in a non-temporary structure within the City. (Ord. 930 (part), 2004)

5.04.030 Imposition of business registration fee.

There is imposed on each place of business located in the City an annual business registration fee of twenty-five dollars ($25.00) for each calendar year. The fee is imposed pursuant to Section 3-38-3 of the New Mexico Statutes Annotated as it now exists or is amended, and shall be known as the "business registration fee." Proof of place of business, as defined in this chapter, may be required by the City Clerk at the City Clerk's discretion as a condition of issuance of a business registration. The required proof may include production of a utility bill or a New Mexico driver's license. The business registration fee may not be prorated for

***Note—**Prior history: Prior code §§ 14-11—14-19, 21—21.1 and Ord. 899.

business conducted for a portion of the year. (Ord. 930 (part), 2004)

5.04.031 Imposition of mobile business activity fee.

In addition to the business registration fee, there is imposed an annual mobile business activity fee of one hundred dollars ($100.00) for each calendar year for those persons who engage in mobile business activity. The mobile business activity fee may not be prorated for mobile business activity that occurs only once in any calendar year and/or for only a limited number of days in any calendar year. (Ord. 930 (part), 2004)

5.04.040 Exemption.

No business registration fee or mobile business activity fee shall be imposed on any business which is licensed under City ordinance or otherwise exempted by law. (Ord. 930 (part), 2004)

5.04.050 Application to do business.

All persons proposing to engage in business within the municipal limits of the City shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the City prior to engaging in business. (Ord. 930 (part), 2004)

5.04.060 Renewal.

Prior to January 31st of each year, any person with a place of business in the City and subject to this chapter shall apply and pay the fee for renewal of business registration with the City Clerk. (Ord. 930 (part), 2004)

5.04.070 Late fee.

There shall be imposed upon each delinquent registration fee a late fee in the amount of ten dollars ($10.00) in the event a new business does not pay the registration fee before it commences business or the annual renewal fee is not paid prior to January 31st. (Ord. 930 (part), 2004)

5.04.080 Required information.

Any person filing an application for issuance or renewal of any business registration shall include in the application a current taxpayer identification number or evidence of application for such current revenue division taxpayer identification number as issued by the revenue division of the State Department of Taxation and

Revenue and any other information required by the City Clerk. (Ord. 930 (part), 2004)

5.04.090 City Clerk to keep register.

The City Clerk shall keep a register in which shall be entered the date of each registration, the date of expiration of the registration, name of the person to whom such registration certificate has been issued and the amount of the fee paid therefor. It shall be the duty of the City Clerk to also issue, sign and deliver to the person paying the registration fee an appropriate receipt and a certificate of registration showing date of registration, to whom issued, the date of expiration thereof, the purpose or occupation for which the certificate of registration was issued and the amount of the fee paid. (Ord. 930 (part), 2004)

5.04.091 Transfer—Authority of holder's agents.

A business registration and mobile business activity license issued under this chapter shall not be transferable nor given to any person nor an employee or agent of the holder, the authority to conduct business pursuant to the business registration or mobile business activity license. (Ord. 930 (part), 2004)

5.04.100 Enforcement.

This chapter may be enforced by appropriate legal or administrative action brought to prevent the conduct of business, restraining, correcting or abating the violation of this chapter, to prevent the occupancy of a building, structure or land on which the business is located, or to withhold the issuance of permits or inspections as appropriate. (Ord. 930 (part), 2004)

5.04.110 Penalties.

Any person convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Ord. 930 (part), 2004)

Chapter 5.08 BUSINESS GROSS RECEIPTS TAX

5.08.010 Imposed.

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to

one-quarter of one (0.25) percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this chapter is pursuant to the Municipal Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the "municipal gross receipts tax." (Prior code § 14-21.2)

5.08.020 Adoption of certain provisions of Gross Receipts and Compensating Tax Act.

This chapter adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. (Prior code § 14-21.3)

5.08.030 Exemptions.

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one (1) point within the municipality to another point outside the municipality; or

B. A business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to subsection C of Section 7-1-6.4 of the New Mexico Statutes Annotated 1978. (Editorially amended during 2001 codification; prior code § 14-21.4)

5.08.040 Disposition of revenue.

Revenue from the municipal gross receipts tax will be placed in the general fund of the City. (Prior code § 14-21.5)

Chapter 5.10 SEXUALLY ORIENTED BUSINESSES

5.10.010 Purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to regulate the locations allowed and prevent the unregulated operation of sexually oriented businesses within the City.

The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. (Ord. 941 (part), 2005)

5.10.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless in context it appears that a different meaning is intended:

"Alcoholic beverages" means beer, beer by the bottle, wine, wine by the liquor bottle and mixed alcoholic drinks.

"Alley" means a public way which extends only secondary means of access to abutting property.

"Applicant" means and includes each member of a partnership when the applicant is a partnership. If a member of the applicant partnership is not a person, the applicant shall include those persons holding a ten (10) percent or greater interest in the entity which constitutes that member of the partnership applicant. The term applicant shall include each officer, director and holder of a ten (10) percent or greater interest of a corporation, firm or association when the applicant is a corporation, firm or association. If the holder of a ten (10) percent or greater interest in a corporation, firm or association applicant is not a person, the applicant shall include those persons holding a ten (10) percent or greater interest in the entity which holds a ten (10) percent or greater interest in the corporation, firm or association which is the applicant. When a license is issued under this chapter, the applicant becomes the license holder.

"Church" means a place for public worship for any type of religious service or rite or faith based service, including but not limited to Christian, Native American, Judaism, and all other religions.

"City Clerk" means the City Clerk of the City of Hobbs or his/her designated agent.

"City Manager" means the City Manager of the City of Hobbs or his or her designated agent.

"Commission" means the City of Hobbs City Commission.

"Customer" means any person who:

1. Is allowed to enter an establishment in return for the payment of an admission fee or any form of consideration or gratuity; or
2. Enters an establishment for the purpose of purchasing or renting a commodity or services therein.

"Dancing" means to move the body, especially the feet, in rhythm, ordinarily to music.

"Dwelling" means a building or portion thereof designed exclusively for residential occupancy, including one-family, two-family and multiple-family dwellings, except for buildings designed and used as hotels, boarding or rooming houses and motels.

"Educational institution" means a college or university or junior college giving general academic instruction equivalent to the standards prescribed by a national accreditation agency or the State Department of Education.

"Employee" means every owner, partner, manager, supervisor, agent, independent contractor, employee, entertainment person or worker who renders personal services of any nature in the conduct of a sexually oriented business. It includes any person who renders any service whatsoever to the customers of an establishment regulated by this section or who works in or about such an establishment and who receives compensation or consideration for such service or work from the operator or owner of such establishment or from the customers therein.

"Hotel" means a building occupied as the more or less temporary abiding place of individuals who are lodged with or without meals, in which, as a rule, the rooms are occupied singly for hire, in which provision is not made for cooking in any individual apartment, and in which there are more than twelve (12) sleeping rooms, a public dining room for the accommodation of more than twelve (12) guests, and a general kitchen.

"Major thoroughfare" means any existing major street or extension thereof constructed in the future as designated on the City of Hobbs Major Thoroughfare Plan Map as either a major arterial street, minor arterial street, major collector street, minor arterial street, or major arterial (STATE HWY).

"Major Thoroughfare Plan" means the City of Hobbs Comprehensive Plan for streets and roads including the Major Thoroughfare Plan Map which designates major street categories and their locations in the City and its extraterritorial planning jurisdictional area.

"Nude, nudity or a state of nudity" means appearing while any of the following portions of the human body are less than completely and opaquely covered:

1. Genitals, whether or not in a state of sexual arousal;
2. Pubic region or pubic hair;
3. Buttock(s);
4. The portions of the female breast(s) beginning from a point immediately above the top of the areola and continuing downward to the lowest portion of the breast(s); or
5. Any combination of the above.

"Operate or cause to operate" means to permit or cause to function, or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an applicant as defined herein, an owner, part owner, licensee or manager of the venture.

"Person," when used in this chapter, means every natural person, firm, co-partnership, association, partnership, corporation or society; and the term "person" shall include both singular and plural, and the masculine shall embrace the feminine gender.

Primary Business Activity. "Primary business" or "primary business activity," for purposes of determining whether a business is subject to regulation, means and includes:

1. Any live performance or entertainment as described in this chapter; or
2. Any nonlive, sexually oriented retail sale, service or rental business activity when, on a calendar day, five percent or more of either inventory held for sale, rent or display; or display space; or exhibition time; or sales include sexually explicit entertainment, materials or items that are intended to provide sexual stimulation or gratification and the entertainment, materials or items are distinguished by or characterized by an emphasis on subject matter depicting, describing or related to specified sexual activities and/or specified anatomical areas; and
3. The operation of a commercial business may include more than one (1) primary business activity.

"Property" means a separate, deeded real property as listed in the Clerk's records of the Lea County Clerk's office.

"Public building" means a building that is visited by the general public and used for public, governmental, institutional or semi-public uses.

"Restaurant" means a place where the primary business is the preparation and sale, on the premises, of food to members of the general public, and providing kitchen facilities separate and apart from the area of the premises devoted to public dining and which may or may not provide live entertainment to patrons of the premises, in accordance with the laws of the State of New Mexico and the Hobbs Municipal Code.

School, Elementary and High. "Elementary and high school" means an institution which offers instructions in the several branches of learning and study required to be taught in the public schools of the State of New Mexico. High schools include junior and senior.

School, Private. "Private school" means an institution of learning having a curriculum equivalent to public schools (does not include specialty schools, such as dancing, music, beauty, mechanical, trade, swimming or commercial schools).

"Screening fence" means a solid six-foot fence or wall of wood or masonry construction which shall be installed prior to or concurrently with the first building permit issued in a development and which shall be permanently maintained.

Semi-nude and Simulated Nudity.

1. "Semi-nude or semi-nudity" means a state of dress in which clothing covers only the genitals, anus, and pubic region.
2. "Simulated nudity" means a state of dress in which any artificial device or covering is worn on a person and exposed to view so as to simulate an actual "state of nudity."

"Sexually oriented business" means and includes any commercial venture whose operations on any calendar day include: the providing, featuring or offering of employees or entertainment personnel who appear in a state of nudity, semi-nude or simulated nudity and provide live performances or entertainment intended to provide sexual stimulation or sexual gratification to customers and which is offered as a feature of a primary business activity of the venture; or, the providing, featuring or offering, as a primary business activity as defined herein, of nonlive, sexually explicit entertainment materials, or items for sale or rental to customers, or the providing or offering of a service or exhibition of materials or items which are intended to provide sexual stimulation or sexual gratification to its customers, said materials, items or services being distinguished by or characterized by an emphasis

on subject matter depicting, describing or relating to specified sexual activities and/or specified anatomical areas. The term "sexually oriented business" shall include, but not be limited to the following:

1. "Sexually oriented cabaret" means an establishment whose business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities, specified anatomical areas, nudity, simulated nudity, or any combination thereof.

2. "Sexually oriented modeling studio" means an establishment whose business is the providing to customers, figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and to display specified anatomical areas while being observed, painted, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

3. "Sexually oriented bookstore, film or video store" means an establishment having a primary business activity of marketing, selling, displaying or dispensing stock in trade, books, films, videos, magazines, periodicals, computer imaging products or other reproductions which are intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by an emphasis on depicting or describing "specified sexual activity" or "specified anatomical areas."

4. "Sexually oriented viewing booth or arcade" means an establishment or commercial venture which has within its structure any coin-operated or slug-operated or electrical or mechanical device, which projects or displays any image into a viewing area or other enclosure which is designed for presenting material intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by a predominant emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

5. "Sexually oriented theater or sexually oriented motion picture theater" means an establishment or commercial venture which is conducted within an enclosed building and which projects or displays for viewing by an audience material intended to provide sexual stimulation or sexual gratification to

customers, and which are distinguished or characterized by a predominant emphasis on matter depicting, describing or relating to "specified anatomical areas" or "specified sexual activities" for observation by patrons.

6. "Sexually oriented lounge" means a "sexually oriented cabaret" as defined above which allows the consumption of alcoholic beverages on the premises.

7. "Sexually oriented retail store" means a retail establishment which has a primary business activity of marketing, selling, displaying or dispensing stock in trade, books, films, magazines, periodicals, instruments, devices, paraphernalia, or any other products which are intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by an emphasis on depicting, describing or related to "specified sexual activities" or "specified anatomical areas."

8. "Sexually oriented motel or adult motel" means a hotel, motel or similar commercial establishment which: (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic or computer-generated reproductions which are intended to provide sexual stimulation or sexual gratification to customers, and which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of such adult types of photographic or computer-generated reproductions; or (b) offers a sleeping room for rent on an hourly basis; or allows a tenant or occupant of a sleeping room to sub-rent the room on an hourly basis.

9. "Sexually oriented escort agency" means a person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes, for a fee, tip, or other consideration. For purposes of this definition, an "escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

10. "Sexually oriented encounter center" means a business or commercial venture that offers for any form of consideration physical activities between persons when one (1) or more of the persons are in a state of nudity or semi-nudity.

"Specified anatomical areas" means the following portions of the human body:

1. Genitals, whether or not in a state of sexual arousal;
2. Pubic region or pubic hair;
3. Buttock or buttocks;
4. The portions of the female breast below a point immediately above the top of the areola; and
5. Any combination of the above.

"Specified sexual activities" means one (1) or more of the following:

1. The fondling, massaging or other erotic touching or stimulation of "specified anatomical areas";
2. Ultimate sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, sodomy;
3. Masturbation, actual or simulated;
4. Excretory functions as part of or in connection with any of the activities set forth in subsections 1. through 3. of this definition.

"Street" means a public way which extends primary means of access to abutting properties. (Ord. 941 (part), 2005)

5.10.030 Permitted locations for sexually oriented businesses.

Sexually oriented businesses are allowed to be located anywhere in the City of Hobbs with the following exceptions:

A. Sexually oriented businesses shall be located at least two thousand (2,000) linear feet from any educational institution, including all properties owned by an educational institution.

B. Sexually oriented businesses shall be located at least two thousand (2,000) linear feet from any school, including elementary or high school or any private school, including all properties owned by a school and including daycare or nursery facilities.

C. Sexually oriented businesses shall be located at least two thousand (2,000) linear feet from any public park or recreational area.

D. Sexually oriented businesses shall be located at least two thousand (2,000) linear feet from any church or any public building, including all properties owned by a church.

E. Sexually oriented businesses shall be located at least five hundred (500) linear feet from any hotel.

F. Sexually oriented businesses shall be located at least five hundred (500) linear feet from any restaurant.

G. Sexually oriented businesses shall be located at least two hundred fifty (250) linear feet from any dwelling unit.

H. Sexually oriented businesses shall be located at least three hundred (300) linear feet from any other adjacent sexually oriented business.

I. Sexually oriented businesses shall be located at least one hundred (100) linear feet from any right-of-way boundary of any designated major thoroughfare located on the Major Thoroughfare Plan Map.

J. All dimensions included in this chapter shall be measured from the property line of the proposed location of the sexually oriented business to the property line of the above referenced adjacent use as noted above. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

K. In the event that the City of Hobbs adopts a Zoning Chapter in the future, all location requirements for sexually oriented businesses may be specified in the Zoning Chapter and all sexually oriented businesses will be required to be located in a Special Use Zoning District.

L. All of the above location requirements shall be waived for existing sexually oriented businesses as of the date of adoption of this chapter. (Ord. 941 (part), 2005)

5.10.040 Site requirements.

A. The site shall contain adequate area to contain all parked vehicles within the property boundary of the site.

B. The site shall be accessed directly by a public street for the main access.

C. All parking areas shall comply with the following off-street parking requirements:

1. The "parking area" is defined as an area for the temporary storage of an automobile which shall be permanently reserved for such purpose and which shall not be within or on any public street, alley or other right-of-way.

2. Such parking area shall:

   a. Have a permanent all-weather surface paved in accordance with City Standards for residential streets and meet all City street and drainage requirements;

   b. Have dimensions for each space of not less than nine (9) feet by eighteen (18) feet;

   c. Be accessible by an all-weather-surfaced drive of sufficient width to provide for access and maneuvering, which drive shall connect with a dedicated street, provided, however, such drive shall not be required for spaces that abut an alley;

   d. Provide adequate barriers to keep any parked vehicle from extending into or overhanging any public right-of-way;

   e. Be so designed that the parking area will contain adequate spaces to eliminate any overflow parking on the public street with all vehicle to be parked and unparked without requiring the moving of any other vehicle; and

   f. Be located on the same property as the business being licensed.

D. The parking area must be screened from view with an adequate screening fence.

E. The site and building shall conform to all other City regulations and codes. (Ord. 941 (part), 2005)

5.10.050 On-site signs and off-premises signs and outdoor advertising.

A. Requirements for on-premise signs are as follows:

1. One freestanding sign with indirect lighting not to exceed twenty (20) feet in height with a face area not to exceed one hundred (100) square feet is permitted. The sign must be fixed (nonrotating) and shall not contain any flashing lights or LED flashing message board information. The sign shall not be internally illuminated.

2. Except for directional signs not to exceed thirty (30) inches in height and ten (10) square feet in face area, no other signs are permitted on the premises.

B. No off-premise signs or off-site outdoor advertising signs of any kind are permitted.

C. No billboards are permitted, either on-site or off-site.

D. All signs must be permitted and otherwise comply with all other City sign requirements according to Chapter 15.32 of the Hobbs Municipal Code. (Ord. 941 (part), 2005)

5.10.060 Existing sexually oriented businesses at the date of adoption of this chapter.

For existing sexually oriented businesses in operation on the date of adoption of this chapter, the provisions of this chapter shall apply to existing sexually oriented businesses beginning ninety (90) days after the effective date of the chapter, except that all site requirements (Section 5.10.040 of this chapter) shall not apply to existing sexually oriented businesses unless the business operations are expanded or the business use changes. Existing sexually oriented businesses shall comply with Section 5.10.050, Sign requirements of this chapter only if new signs are added to the property. An existing sexually oriented business may rebuild and reestablish the same business if the facility is closed due to a fire or other catastrophic loss to the building. Existing sexually oriented businesses are allowed to expand on the same site if there is no change in the business operations, and as long as compliance is achieved as to all other relevant City codes regulating building codes and building occupancy. (Ord. 941 (part), 2005)

5.10.070 License required.

A. It shall be an offense for any person to operate a sexually oriented business without a valid license, issued by the City for the particular type of sexually oriented business activity conducted.

1. A person, partnership, firm, association or corporation may not operate a sexually oriented business without a valid license issued by the City for that particular type of sexually oriented business activity.

2. An application must be made on a form provided by the City Clerk's office. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram must be drawn to a designated scale with the dimensions of interior walls indicated.

B. The fact that an applicant possesses other types of State or City permits does not exempt him or her from the requirement of obtaining a sexually oriented business license.

C. Any person, partnership, firm, association or corporation operating or doing business as a sexually oriented business permitted under this chapter shall include and prominently display their license number on all printed or written advertising used by said business. (Ord. 941 (part), 2005)

5.10.080 License application.

A. Any person, partnership, firm, association or corporation desiring to obtain a sexually oriented business license shall apply to the City Clerk. The application will be referred to several City departments for review. The City shall conduct an appropriate and thorough investigation of the application and the applicant's background.

B. Each application shall be accompanied by the bond required by this chapter and a nonrefundable application fee to defray the costs of processing such license application, and which fee reflects the actual or estimated cost of processing the license application by the City.

C. 1. The license fee or annual license fee for a sexually oriented business may be adjusted annually commencing January 1, 2007, and each year thereafter, to correspond to the actual cost of providing the applicable services.

2. On each January 1st thereafter, the City of Hobbs may adjust the fees provided for by this code and such other fees as may be charged by the City of Hobbs in accordance with this section and shall file with the City Clerk a list setting forth the adjusted fees. (Ord. 941 (part), 2005)

5.10.090 License application contents.

A. An applicant for a sexually oriented business license shall file with the City Clerk a typed and fully completed application, including all attachments or submissions as may be required. The application shall contain the following information and material:

1. The date of birth, social security number and full legal name, including any and all name(s) by which the person has been known during the last five (5) years, of the applicant and of each person included within the definition of applicant as set forth in this chapter.

2. If the applicant is a corporation, the exact corporate name, state of incorporation and principal place of business for the corporation.

3. The current residence address of the applicant and of each person included within the definition of applicant as set forth in this chapter.
4. The applicant's two (2) residence addresses immediately preceding the applicant's present residence address, and the dates of residency at each address.
5. The street address at which the applicant will conduct the sexually oriented business activity, and the name under which the business will be conducted.
6. A description of the sexually oriented business to be operated by the applicant including a description of any service to be provided or a generic description of product to be sold, rented or utilized which qualifies the business as a sexually oriented business.
7. The telephone number(s) of the business.
8. The legal description of the parcel of land on which the business is to be located. The application shall include legible and complete copies of the recorded record establishing current ownership of the parcel. If the applicant is not the owner of record of the parcel, the application shall include a complete and legible copy of the lease, if any, and such other documentation as may be necessary to show that the applicant has the legal right to occupy and use the premises for the purposes described in the application.
9. The date on which the applicant became owner of the business for which a license is sought, and the date on which the business began operations at the location for which a license is sought.
10. Written proof that the applicant and each person included within the definition of applicant is at least eighteen (18) years of age, or is at least twenty-one (21) years of age when the sale or consumption of alcoholic beverages would be an aspect of the venture.
11. The height, weight and color of hair and eyes of the applicant and of each person included within the definition of applicant as set forth herein.
12. Two (2) portrait photographs, at least two (2) inches by two (2) inches in size, taken within six (6) months of the date of the application of the applicant and of each person included within the definition of applicant as set forth herein.
13. The employment history of the applicant and of each person included within the definition of applicant as set forth in this chapter, going back five (5) years from the date of application, setting forth the name, telephone number and

address for each employer, nature of employment and the dates of employment. A complete and accurate description of previous self-employment shall be included.

14. All felony and misdemeanor convictions of the applicant and of each person included within the definition of applicant as set forth herein, and the applicant's spouse, involving any of the offenses as set forth herein.

15. Complete fingerprints recorded by the Hobbs Police Department of the applicant and of each person included within the definition of applicant as set forth herein.

16. The name, including any aliases and stage name by which the person has been known during the last five (5) years, date of birth, current residence address and clear, legible copy of current photo identification of each person employed or intended to be employed by the applicant in the sexually oriented business.

17. Such other information and identification as the City may require in order to establish the truth of the matters required to be set forth in the application.

18. A written statement signed by the applicant and by each person included within the definition of applicant as set forth herein, stating that: he/she has read all of the provisions of this code relating to the operation of a sexually oriented business; that he/she has had the opportunity to review the same with such counsel as he/she has deemed desirable and that he/she understands the same; that he/she has a continuing duty to report any change in the status of information submitted in the application as set forth herein; and, that he/she intends to operate a sexually oriented business as defined in and regulated by this code.

19. The application shall be signed and verified by the applicant and by each person included within the definition of applicant as set forth herein.

20. The name and local address of each individual who will manage, direct, or control the premises and operations of the permitted establishment or venture.

B. The application shall be signed and verified under oath that the information contained therein, including each attachment or enclosure, is true and correct. (Ord. 941 (part), 2005)

5.10.100 License application attachments.

An application for a license under this chapter shall include the following attachments:

A. The application fee required as set forth herein.

B. A surety bond, letter of credit or other approved surety in the amount of five thousand dollars ($5,000.00). The bond shall be executed and acknowledged by the license holder as principal and by a corporation licensed to transact fidelity and surety business in the State of New Mexico as surety. The bond shall be continuous in form and run concurrently with the license period, and shall be in favor of the City for the benefit of any person injured by any act of the principal or the principals' agent or employee, and shall be subject to claim by any person injured thereby.

C. A certified copy of the assumed name certificate filed in compliance with the laws of the State of New Mexico if the applicant is to operate the business under an assumed name.

D. If applicant is a New Mexico corporation, a certified copy of the chapters of incorporation, together with all amendments thereto.

E. If applicant is a foreign corporation, a certified copy of the certificate of authority to transact business in this State, together with all amendments thereto.

F. If applicant is a limited partnership formed under the laws of New Mexico, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed with the State of New Mexico.

G. If the applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed with the State of New Mexico. (Ord. 941 (part), 2005)

5.10.110 License review and public hearing.

A. The City shall investigate said application and the background of the applicant, including review by the Police Department, City Attorney, City Planner, City Engineer, Building Official, Environmental Services Officer, and/or the Fire Marshal. Within forty-five (45) days after receipt by the City Clerk of the fully completed

application for license, including all attachments or submissions as may be required, the City Manager shall report the results of the investigation to the City Commission.

B. Prior to the initial issuance of a license to operate a sexually oriented business, the City Commission shall hold a public hearing. The City Commission will consider the application and background investigation and any other relevant factors when making the decision to issue the license or to deny the license. The public hearing will be held within sixty (60) days of receipt of the date of the application for the license. (Ord. 941 (part), 2005)

5.10.120 Issuance of license.

A. Within fifteen (15) days after the public hearing, the City Commission will render a decision to issue or deny the license application. The City Clerk shall inform the applicant by certified mail, return receipt requested, as to the approval or denial of said license.

B. If the license is approved by the City Commission, the City Clerk shall issue a license to the applicant which shall be valid only as to the sexually oriented business activities, services or products described and stated in the application and approved on the face of the license.

C. When a license is issued to the applicant, each person included within the definition of applicant as set forth in this chapter, shall be considered to be a license holder. (Ord. 941 (part), 2005)

5.10.130 Denial of license.

The City Commission may deny a license if one (1) or more of the following conditions was found to exist:

A. The location of the sexually oriented business or enterprise is or would be in violation of the location requirements of this chapter.

B. The applicant has failed to make full disclosure, or to supply all of the information requested on the application, or the application is otherwise incomplete.

C. The applicant has provided false, fraudulent or untruthful information on the application, or is attempting to acquire the license under false pretenses.

D. The application or the establishment does not meet one (1) or more of the requirements of this chapter or New Mexico law.

E. An applicant who has been convicted or whose spouse has been convicted of an offense listed in this section may qualify for a sexually oriented business license only when the time period required under this section has elapsed.

F. The correct license fee has not been tendered to the City and, in the case of a check or bank draft, honored with payment upon presentation.

G. The structure, configuration or layout of the premises, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the City building, zoning, fire prevention and protection, and health chapters and regulations.

H. The applicant or the applicant's spouse has been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the date of submission of the application to the City Clerk.

I. The applicant or the manager or any other person principally in charge of the operation of the business, is under eighteen (18) years of age, or is under twenty-one (21) years of age and the sale or consumption of alcoholic beverages would be an aspect of the venture.

J. The applicant has not demonstrated that the applicant owns, leases or otherwise has or continues to have the lawful right to occupy and use the premises for the purpose stated in the application.

K. The applicant has been a license holder, owner or an employee with managerial responsibilities for a sexually oriented business when the license for such business had been suspended on two (2) or more occasions in any twelve-month period, or had been revoked, within two (2) years preceding the date of the application.

L. 1. An applicant or an applicant's spouse has been convicted of a crime involving one (1) or more of the following described offenses, or of acts which would constitute one (1) or more of the following offenses if committed in another state, regarding any of the following offenses as described in the laws of the State of New Mexico and the Hobbs Municipal Code:

   a. Prostitution,

   b. Promotion of prostitution,

   c. Patronizing prostitutes,

   d. Accepting earnings of a prostitute,

e. Criminal sexual penetration,

f. Criminal sexual contact,

g. Criminal sexual contact of a minor,

h. Obscenity,

i. Sexual exploitation of children,

j. Sexual exploitation of children by prostitution,

k. Enticement of a child,

l. Possession or promotion of child pornography,

m. Public lewdness,

n. Indecent exposure,

o. Aggravated indecent exposure,

p. Indecent dancing,

q. Indecent waitering,

r. Sale, distribution or display of harmful material to a minor,

s. Money laundering,

t. Engaging in organized criminal activity, or

u. Criminal attempt, conspiracy or solicitation to commit any of the above offenses; and

2. With the following stipulations applicable to every conviction:

a. Less than three (3) years have elapsed since the date of the conviction, or the date of release from the terms of probation, parole or deferred adjudication, or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense,

b. Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of probation, parole or deferred adjudication, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense, or

c. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period;

3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse. (Ord. 941 (part), 2005)

5.10.140 Suspension.

A. The City Manager may suspend a license for a period not to exceed thirty (30) days if he or she determines that a license holder or any employee of a license holder has violated or is not in compliance with any section of this chapter or New Mexico law; or that a condition exists which would be grounds or denial of an application for license under this chapter.

B. The City Clerk shall inform the license holder by certified mail, return receipt requested, of the suspension of a license and of the license holder's right to appeal as set forth in this chapter. Written notice of the suspension of a license shall be posted in a conspicuous place on the business premises. (Ord. 941 (part), 2005)

5.10.150 Revocation.

A. The City Commission shall have the authority to revoke a license issued under this chapter when it is determined that:

1. The license has been suspended as provided herein and the basis for the suspension has not been satisfactorily corrected or abated for at least fifteen (15) days after notice of the suspension to the license holder;

2. A suspension as provided herein has occurred and both of the following circumstances are present: (a) the time for appeal of the suspension has expired or a final decision on appeal upholding the suspension has been obtained, and (b) the license has been previously suspended at least one (1) time in the twelve (12) months preceding the cause for the last suspension;

3. The license holder knowingly or negligently operated, provided or permitted a sexually oriented business activity or entertainment to occur on the premises when such activity was not within the scope of activity approved on the face of a valid license or during a period of time when the license was suspended;

4. The license holder knowingly or negligently permitted a common nuisance or public nuisance to exist on the premises as defined by the laws of New Mexico or the Hobbs Municipal Code;

5. The license holder knowingly or with criminal negligence participated in or permitted the unlawful possession, use or sale of a controlled substance on the premises, as defined by the laws of the State of New Mexico;
6. The license holder knowingly or negligently participated in or permitted prostitution, or its solicitation to take place on the premises;
7. The license holder or its designated managing agent has been convicted, since the permit was issued, of a felony or misdemeanor described in this chapter;
8. The license holder or its designated managing agent has allowed a person under eighteen (18) years of age to be employed therein, or under twenty-one (21) years of age to be employed therein if the consumption of alcoholic beverages is an aspect of the venture; or
9. The license holder or its designated managing agent has made a false or misleading statement of material fact in the application for the license required by this chapter, or has submitted a false, altered or forged record or report required by this chapter to be submitted, produced, maintained or prepared by the license holder.

B. The City Clerk shall inform the license holder by certified mail, return receipt requested, of the revocation of a license and of the license holder's right to appeal as set forth herein. Written notice of the revocation of a license shall be posted in a conspicuous place on the business premises. (Ord. 941 (part), 2005)

5.10.160 Appeal.

The applicant or license holder whose application for a license has been denied or whose license has been suspended or revoked shall have the right of appeal to the District Court in conformity with Section 39-3-1.1 N.M.S.A. and Rules 1-074 and 1-074 N.M.R.A., as those laws may be amended from time to time. Upon receipt by the City Clerk of a notice of appeal, the suspension or revocation of a license hereunder shall be stayed until a decision on the appeal is rendered by the District Court. (Ord. 941 (part), 2005)

5.10.170 Expiration of license.

Each license shall expire one (1) year from the date of issue as shown on the face of the license. Application for renewal should be made at least forty-five (45) days before the expiration date. (Ord. 941 (part), 2005)

5.10.180 Nontransferability of license.

When issued, the license shall remain the sole property of the City and shall be valid only as to the applicant and location for which it was originally issued. The license may not be sold or transferred, voluntarily or involuntarily, to any other person or entity. The license shall not be transferred to a physical location other than the premises described on the face of the license. (Ord. 941 (part), 2005)

5.10.190 Modification of license.

In the event a lawfully operating sexually oriented business desires to modify its operations by varying the activity, service or products provided from those as approved on the face of the license, an application for a new license shall be applied for and the applicant shall not modify the operation to include any sexually oriented business activity not approved on the face of the license without first securing the new license as required. (Ord. 941 (part), 2005)

5.10.200 Inspection(s).

An applicant or license holder shall allow representatives of the Police Department, Building Inspection Department, Fire Department, Environmental Department, or any other designated official of the City to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time that the premises are occupied by one (1) or more persons. (Ord. 941 (part), 2005)

5.10.210 Applicant's/license holder's continuing duty to provide information.

A. The applicant/license holder shall have a continuing duty, during the term of any license or renewal thereof, to notify the City Clerk of any change in the status of any information required to be submitted on the application for license.

B. The applicant/license holder shall have a continuing duty, during the term of any license or renewal thereof, to notify the City Clerk of the hiring of an employee or change of status of an employee within fifteen (15) days of the date of hire or change of status. The notice shall include a legible copy of the employee application form and the employee photo and identification as required as set forth herein.

C. The notices required in this section shall be given in writing, signed by the applicant, and delivered or post marked to the City Clerk within thirty (30) days of the change in status, unless otherwise specifically provided for.

D. The foregoing shall not be construed as affording to the applicant any right not otherwise specifically granted under this chapter. (Ord. 941 (part), 2005)

5.10.220 Premises used; and right to access.

A. No part of the premises used as a sexually oriented business, other than a sexually oriented motel, shall be used as living quarters or as a residence on a temporary or permanent basis.

B. No sexually oriented business shall use an entrance or exit that also provides a direct passageway to any other type of business, residence or living quarters.

C. When open for business, all entry and exit doors shall remain unlocked and no obstruction shall be placed so as to prevent or impede ingress or egress.

D. The license holder or individual as designated in this chapter shall remain upon the premises and on duty at all times said business is open.

E. The license holder and each person as designated in this chapter by the license holder to manage, direct or control the business, shall remain legally responsible for the conduct of each employee subject to his or her control. (Ord. 941 (part), 2005)

5.10.230 Fees for license application and annual license.

A. Each application shall be accompanied by a nonrefundable application fee of seven hundred fifty dollars ($750.00) which is required to defray the actual (estimated) costs of processing said license application.

B. The annual license fee for a sexually oriented business shall be five thousand dollars ($5,000.00), which is required to defray the actual (estimated) costs of the annual license.

C. No portion of any fee collected under this section shall be returned after a license has been issued or refused. Each license shall be effective when issued and shall expire one (1) year from the date of issue as shown on the face of the license. (Ord. 941 (part), 2005)

5.10.240 Sexually oriented businesses, additional regulations.

A. The following sexually oriented businesses do not comply with the City of Hobbs Municipal Code, and are therefore prohibited from operation in the City of Hobbs:

1. Sexually oriented encounter center;

2. Sexually oriented motel;

3. Sexually oriented escort agency.

B. Nothing in this chapter condones, allows or permits any activity that violates the City of Hobbs Municipal Code, Chapter 9.32, Obscenity.

C. A sexually oriented business shall not employ any person under the age of eighteen (18) years.

D. A person commits an offense if he or she appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a sexually oriented business premises which can be viewed from the public right-of-way. (Ord. 941 (part), 2005)

5.10.250 Sexually oriented cabaret or lounge, additional regulations.

A. No employee or entertainment personnel shall appear on the premises of a sexually oriented cabaret or sexually oriented lounge while in a state of nudity. Specified sexual activities shall not be permitted in any sexually oriented cabaret or sexually oriented lounge. No customer shall appear nude or semi-nude during any activity within a sexually oriented cabaret or sexually oriented lounge; and no such customer nudity or semi-nudity shall be knowingly permitted by an employee of the venture. It is a defense to prosecution under this section if the person was in a restroom not open to public view or persons of the opposite sex.

B. An employee of a sexually oriented cabaret or lounge, while appearing semi-nude or in a state of simulated nudity commits an offense if he or she intentionally or knowingly touches a customer or the clothing of a customer.

C. A customer at a sexually oriented cabaret or lounge, commits an offense if he or she knowingly or intentionally touches an employee or the clothing of an employee, when the employee is appearing in a state of simulated nudity or semi-nude. (Ord. 941 (part), 2005)

5.10.260 Sexually oriented retail store, bookstore, film or video store, additional regulations.

Specified sexual activities shall not be permitted in any sexually oriented retail store, bookstore, film or video store. (Ord. 941 (part), 2005)

5.10.270 Sexually oriented motels prohibited.

A. Sexually oriented motels are prohibited by this chapter.

B. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the business is a sexually oriented motel as that term is defined in this chapter.

C. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he or she rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he or she rents or subrents the same sleeping room again.

D. For purposes of subsection C of this section, the term "rent" or "subrent" means the act of permitting a room to be occupied for any form of consideration. (Ord. 941 (part), 2005)

5.10.280 Regulations pertaining to exhibition of sexually explicit films or videos.

A. A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel, which exhibits on the premises in a viewing room a film, video cassette, video reproduction or image which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the City or his or her designee.
4. The license holder and operator shall maintain at least one (1) employee on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths shall be open on at least one (1) side at all times; doors or other means of closure are prohibited. Holes or pass through in booth walls are prohibited. No more than one (1) person may be permitted within a viewing booth at one (1) time.
6. It shall be the duty of the license holder, and any agent or employee thereof present on the premises, to ensure that the manager's view area specified in subsection (A)(5) of this section, remains unobstructed at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area to which patrons will not be permitted access in the application. Neither specified sexual activities, nudity or semi-nudity shall be permitted by the license holder or any agent or employee thereof, on the premises of the sexually oriented business.
7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot-candle as measured at the floor level.
8. It shall be the duty of the license holder, and any agent or employee thereof present on the business premises, to ensure that the illumination described above is maintained at all times when any patron is present in the premises.

B. A person having a duty under subsections (A)(1) through (A)(8) of this section commits an offense if he or she knowingly or with criminal negligence, fails to fulfill that duty. (Ord. 941 (part), 2005)

5.10.290 Display of sexually explicit materials to minors.

A. A person commits an offense if in a business establishment open to persons under the age of eighteen (18) years, he or she displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion of any of the following:

1. Human sexual intercourse, masturbation, or sodomy;
2. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
3. Less than completely and opaquely covered human genitals, or that portion of the female breast below the top of the areola; or
4. Human male genitals in a discernibly turgid state, whether covered or uncovered.

B. In this section, "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

1. It is available to the general public for handling and inspection; or
2. The outside cover on the item is visible to members of the general public. (Ord. 941 (part), 2005)

5.10.300 Additional regulations for sexually oriented modeling studios.

A. A sexually oriented modeling studio shall not employ any person under the age of eighteen (18) years.

B. Specified sexual activities shall not be permitted in any sexually oriented modeling studio.

C. A sexually oriented modeling studio shall not place or allow a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (Ord. 941 (part), 2005)

5.10.310 Additional regulations for sexually oriented theaters and sexually oriented motion pictures theaters.

Neither specified sexual activities, nudity or semi-nudity shall be permitted by the license holder or any agent or employee thereof, on the premises of a sexually oriented theater or sexually oriented motion picture theater. (Ord. 941 (part), 2005)

5.10.320 Required records.

A. Every sexually oriented business license holder shall maintain a current list of all employees employed by the business, to include current residence address and date of birth, along with a completed employee application on a form approved by the City Clerk, for each employee employed by the license holder during the term or extended term of a license. A legible and clear copy of each employee's driver's license, State identification card, or passport with photo, shall be maintained by the license holder. The license holder shall cause these employment records to be updated as necessary to keep them current at all times.

B. The records required by subsection A of this section shall be kept available and open for inspection upon demand by the City. (Ord. 941 (part), 2005)

5.10.330 Display of license and notice sign.

A. A license issued under this chapter and a copy of the diagram of the configuration of the premises submitted with the application shall be displayed at all times in an open and conspicuous place on the premises of the business for which it was issued.

B. The license holder shall continuously display during all hours of operation a sign posted at or about eye level, at each public entrance to the premises, of at least eighteen (18) inches in height and twenty-four (24) inches in width, with bold lettering of at least one (1) inch in height, clearly visible and legible to all persons provided entry onto the premises, which shall state:

> "THIS IS A SEXUALLY ORIENTED BUSINESS ESTABLISHMENT WHICH MAY FEATURE NUDITY OR ACTIVITY OF A SEXUAL NATURE. NO PERSON UNDER THE AGE OF 18 YEARS IS PERMITTED ENTRY OR UNDER 21 YEARS WHEN ALCOHOL IS DISPENSED."

C. It is unlawful for any person to counterfeit, forge, change, deface or alter a license. (Ord. 941 (part), 2005)

5.10.340 Affirmative defense.

It is an affirmative defense to prosecution under this chapter that the person was practicing a profession or participating in an activity described as follows:

A. Physicians, surgeons, chiropractors, osteopaths, massage therapists or physical therapists that are duly licensed to practice their respective professions in the State of New Mexico when practicing their respective professions;

B. Nurses registered under the laws of the State of New Mexico when practicing nursing;

C. Trainers of any amateur, semi-professional or professional athlete or athletic team when training or engaging in their sport;

D. Barbers or cosmetologists who are duly licensed under the laws of the State of New Mexico when practicing their profession;

E. Any activity conducted or sponsored by any school district or other public agency;

F. Any activity conducted by a person pursuant to any license issued by the State of New Mexico or any agency thereof or political subdivision, which permits, prescribes standards for and supervises such activity or profession;

G. Private schools providing a course of instruction in photography, or photography studios, which do not provide for consideration photography equipment, models and a studio;

H. Modeling agencies, schools or services, except those which provide live modeling services for consideration in which a customer may obtain an exclusive modeling exhibition at which he or she is the only observer. (Ord. 941 (part), 2005)

5.10.350 Minimum age requirements.

It is unlawful for a license holder or an agent or employee of a license holder to allow a person who is younger than eighteen (18) years of age, or under twenty-one (21) years of age if the sale or consumption of alcoholic beverages is an aspect of the venture, to enter the premises of the sexually oriented business. (Ord. 941 (part), 2005)

5.10.360 Notices.

All notices required hereunder shall be in writing and shall be deemed delivered three days after deposited in a United States Post Office receptacle. (Ord. 941 (part), 2005)

5.10.370 Penalty.

Wherever in this chapter any act is prohibited or declared to be unlawful, or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of this chapter is punishable by a fine of not more

than five hundred dollars ($500.00), or ninety (90) days' imprisonment, or both. Each day such violation continues shall constitute a separate offense. Revocation of a license shall not be a defense against prosecution. (Ord. 941 (part), 2005)

5.10.380 Authority to file suit.

In addition to any criminal penalties sought, the City Attorney is authorized to file suit to enjoin the violation of any regulation of this chapter. (Ord. 941 (part), 2005)

5.10.390 Applicability of other laws.

This chapter shall be cumulative of all other chapters of the City, including the City of Hobbs Municipal Code Chapter 9.32 on obscenity. (Ord. 941 (part), 2005)

5.10.400 Variances and waivers.

Following a duly conducted public hearing, the City Commission may grant a waiver(s) or a variance(s) to the stipulations herein, providing that sufficient justification is presented to the City Commission and a finding is made by the City Commission that approving the waiver or variance to the requirements herein is not inconsistent with the purpose and intent of the chapter. (Ord. 941 (part), 2005)

Chapter 5.12 AMUSEMENT LICENSES

5.12.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Amusements" means all persons, firms and corporations, as well as their agents and employees, who engage in the business of providing entertainment to the public, specifically related to carnivals, circuses, rides and menageries.

"Sponsor" means a local, nonprofit organization with whom any traveling amusement has entered into an agreement for the purpose of providing service for the benefit of the sponsor, and whose members actively participate in the conduct and operation of the amusement.

"Traveling" means such amusements as are not otherwise licensed to conduct business in the City. (Prior code § 14-34)
(Ord. No. 1010, 4-6-2009)

5.12.020 License required.

It is unlawful for any traveling amusement to provide entertainment or to set up to provide entertainment in the City without first obtaining a license therefor from the City. A person, firm, corporation or organization which falls within the definition of traveling amusement shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local business, firm, corporation or organization. (Prior code § 14-35)

5.12.021 Exemption—Lea County Event Center.

A. No amusement license shall be required nor any fee imposed on any amusement activities or events being held at the Lea County Event Center, 5101 Lovington Highway, Hobbs, New Mexico, and/or its adjacent parking lot.

B. A certificate of insurance shall be required for all events held at the Lea County Event Center. The applicant or sponsor shall provide a certificate of insurance for inspection and verification by the City Attorney seven (7) days prior to the event indicating the City of Hobbs as an additional insured on a public liability insurance policy covering any damages arising out of said event in a like sum as the amount provided to the Lea County Event Center.
(Ord. No. 1010, 4-6-2009)

5.12.030 Application.

A. Any person desiring a license required by this chapter shall make application therefor to the City Clerk at least ten (10) days prior to the date of his or her contemplated opening in the City.

B. The application shall be in form of an affidavit and shall state the following information:

1. Name and address of the applicant;
2. The location of his or her principal place of business;
3. The location to be used as well as a letter from the property owner confirming that arrangements for use have been made;
4. The time period covered;
5. The applicant's current State Revenue Division taxpayer identification number and the amount of the fee and deposit to be paid;

6. Names of individual concession contractors, if any. All individual concession contractors will be required to personally appear before the City Clerk and provide photographs and fingerprints;
7. Any additional information the City Clerk finds necessary for the administration of this chapter;
8. Name and address of insurance carrier. The applicant shall provide a certificate of insurance for inspection and verification by the City Attorney indicating that there is in effect public liability insurance covering any damages arising out of the use or operation of any and all devices and facilities operated in connection with the amusement. Such insurance shall be in the minimum amount of three million dollars ($3,000,000.00) for each person pursuant to Section 57-25-3(A) NMSA 1978 Comp.;
9. Name and address of sponsor. The applicant shall provide a copy of any agreement made with a sponsor. (Prior code § 14-36)

5.12.040 Deposit.

Prior to the issuance of the license under this chapter, a deposit in the sum of fifty dollars ($50.00) per day shall be made with the City Clerk. This deposit shall be returned to the applicant if, after the departure of applicant from the location in the City, it is determined by the City Clerk that it is not required to defray any cleanup or property damage expenses. (Prior code § 14-37)

5.12.050 Fee—Application for refund of fee.

A. Before any license is issued under this chapter, the applicant shall pay to the City Clerk a fee of three hundred dollars ($300.00) for each day covered by the license, which sum shall be compensation to the City for the services required of it by this chapter and which shall enable the City to partially defray the expenses of administering and enforcing the provisions of this chapter.

B. The licensee may make application to the City Clerk for a refund of the fee and such refund may be allowed if the City Clerk finds substantial evidence that the entertainment provided was primarily for the benefit of a sponsor. Application for refund shall be made in writing, and the decision of the City Commission shall be final. (Prior code § 14-38)

5.12.060 Issuance.

The City Clerk shall issue to any applicant a license authorizing him or her to provide entertainment to the public if such applicant has fully complied with all

provisions of this chapter. (Prior code § 14-39)

5.12.070 Display.

Each license issued under this chapter shall be prominently displayed in a conspicuous place on the premises where the entertainment is being provided. (Prior code § 14-40)

5.12.080 Security.

Sufficient security, as determined by the Chief of Police or his or her designee, is required. (Prior code § 14-41)

5.12.090 Inspections.

A. Fire Department. It shall be the duty of the Director of Fire and Ambulance Services or his or her designee to see that every traveling amusement is inspected prior to opening and from time to time thereafter as necessary to insure conformity with such safety precautions as may be required by the Fire Department, and notice to the City Manager of failure to comply shall be grounds for immediate revocation of the license.

B. Police Department. It shall be the duty of the Chief of Police or his or her designee to see that every traveling amusement is inspected prior to opening and from time to time thereafter as necessary to insure conformity with provisions concerning such amusements, compliance with Federal, State and local law and the presence of properly qualified security guards, and notice to the City Manager of noncompliance shall be grounds for immediate revocation of the license. (Prior code § 14-42)

5.12.100 Revocation.

Any license may be revoked by the City Manager at any time during the life of such license for any violation by the licensee of the ordinance provisions relating to the license, the subject matter of the license or to the premises occupied. Such revocation may be in addition to any fine imposed. (Prior code § 14-43)

5.12.110 Penalty.

Any person found guilty of violating the provisions of this chapter shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment. (Prior code § 14-44)

Chapter 5.16 CREATE TELEVISION RATES

5.16.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Basic cable rates" means the monthly charges for a subscription to the basic service tier and the associated equipment.

"Basic service tier" means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels, and all domestic television signals other than superstations.

"Benchmark" means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

"Cable Act of 1992" means the Cable Television Consumer Protection and Competition Act of 1992.

"Cable operator" means any person or group of persons who:

1. Provide cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such a cable system; or
2. Otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

"Channel" means a unit of cable service identified and selected by a channel number or similar designation.

"Cost-of -service showing" means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

"FCC" means the Federal Communications Commission.

"Initial basic cable rates" means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the City notifies the cable operator of the City's qualification and intent to regulate basic cable rates.

"Must-carry signal" means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

"PEG channel" means the channel capacity designated for public, educational or governmental use, and facilities and equipment for the use of that channel capacity.

"Price tap" means the ceiling set by the FCC on future increases in basic cable rates regulated by the City, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

"Reasonable rate standard" means a per channel rate that is at, or below, the benchmark or price cap level.

"Superstation" means any nonlocal broadcast signal secondarily transmitted by satellite. (Ord. 817 (part), 1994)

5.16.020 Initial review of basic cable rates.

A. Notice. Upon the adoption of the ordinance codified in this chapter and the certification of the City by the FCC, the City shall immediately notify all cable operators in the City, by certified mail, return receipt requested, that the City intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

B. Cable Operator Response. Within thirty (30) days of receiving notice from the City, a cable operator shall file, with the City, its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

C. Expedited Determination and Public Hearing.

1. If the City Commission is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard as determined by the applicable benchmark, the City Commission shall:

    a. Hold a public hearing at which interested persons may express their views; and

    b. Act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the City.

2. If the City Commission takes no action within thirty (30) days from the date the cable operator filed its basic cable rates with the City, the proposed rates shall continue in effect.

D. Extended Review Period.

1. If the City Commission is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the City Commission shall, within thirty (30) days from the date the cable operator filed its

basic cable rates with the City and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the City Commission needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

2. If the City Commission has not made a decision within the ninety (90) or one hundred fifty (150) day period, the City Commission shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

E. Public Hearing. During the extended review period and before taking action on the proposed rate, the City Commission shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

F. Objections. An interested person who wishes to make an objection to the proposed initial basic rate may request the City Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the City Clerk with the objector's name and address.

G. Benchmark Analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the City Commission shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the City Commission's findings, the initial basic cable rates shall be established as follows:

1. If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates shall be capped at that level.

2. If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by ten (10) percent, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992, and the initial date of regulation.

3. If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

H. Cost of Service Showings. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The City Commission shall review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The City Commission may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's rates on September 30, 1992, minus .ten (10) percent, shall prescribe the cable operator's new rates.

I. Decision.

1. By Formal Resolution. After completion of its review of the cable operator's proposed rates, the City Commission shall adopt its decision by formal resolution. The decision shall include one (1) of the following:

   a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the City Commission shall approve the initial basic cable rates proposed by the cable operator; or

   b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the City Commission shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

2. Rollbacks and Refunds. If the City Commission determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of- service showing justifies lower rates, the City Commission may order the rates reduced in accordance with subsection G or H of this section, as applicable. In addition, the City Commission may order the cable operator to pay to subscribers, refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments)

retroactive to September 1, 1993. The method for paying any refund and the interest rate shall be in accordance with FCC regulations as directed in the City Commission's decision resolution.

3. Statement of Reasons for Decision and Public Notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the City Commission must give public notice of its decision. Public notice shall be given by advertisement once, in a newspaper of general circulation in the City.

J. Appeal. The City Commission's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable Federal regulations. (Ord. 817 (part), 1994)

5.16.030 Review of request for increase in basic cable.

A. Notice. A cable operator in the City who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the City and notify all subscribers at least thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one (1) year after the determination of the initial basic cable rates.

B. Expedited Determination and Public Hearing.

1. If the City Commission is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard as determined by the applicable price cap, the City Commission shall:

   a. Hold a public hearing at which interested persons may express their views; and

   b. Act to approve the rates within thirty (30) days from the date the cable operator filed its request with the City.

2. If the City Commission takes no action within thirty (30) days from the date the cable operator filed its request with the City, the proposed rates shall go into in effect.

C. Extended Review Period.

1. If the City Commission is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or

if the cable operator submits a cost-of-service showing, the City Commission shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the City Commission needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; or

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

2. The proposed rate increase is tolled during the extended review period.

3. If the City Commission has not made a decision within the ninety (90) or one hundred fifty (150) day period, the City Commission shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

D. Public Hearing. During the extended review period and before taking action on the proposed rate increase, the City Commission shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

E. Objections. An interested person who wishes to make an objection to the proposed rate increase may request the City Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the City Clerk with the objector's name and address.

F. Delayed Determination. If the City Commission is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the City Commission later issues a decision disapproving any portion of the increase.

G. Price Cap Analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the City Commission shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the City Commission's findings, the basic cable rates shall be established as follows:

1. If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

2. If the proposed basic cable rate increase exceeds the price cap established by the FCC, the City Commission shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

H. Cost of Service Showings. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the City Commission shall review the submission pursuant to FCC standards for cost-of-service review. The City Commission may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of- service determination resulting in a rate below the price cap or below the cable operator's then current rate shall prescribe the cable operator's new rate.

I. Decision. The City Commission's decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved, in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the City Clerk to record the objection or may be submitted in writing at any time before the decision resolution is adopted.

J. Refunds.

1. The City Commission may order refunds of subscribers' rate payments with interest if:

   a. The City Commission was unable to make a decision within the extended time period as described in subsection C of this section;

   b. The cable operator implemented the rate increase at the end of the extended review period; and

   c. The City Commission determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the City Commission disapproves any portion of the rate increase.

2. The method for paying any refund and the interest rate shall be in accordance with FCC regulations as directed in the City Commission's decision resolution.

K. Appeal. The City Commission's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable Federal regulations. (Ord. 817 (part), 1994)

5.16.040 Cable operator information.

A. City May Require.

1. In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the City Commission may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this section.
2. In cases where initial or proposed rates comply with the reasonable rate standard, the City Commission may request additional information only in order to document that the cable operator's rates are in accord with the standard.

B. Request for Confidentiality.

1. A cable operator submitting information to the City Commission may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.
2. If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.
3. Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.
4. Casual requests which do not comply with the requirements of this subsection shall not be considered.

C. City Commission Action. Requests which comply with the requirements of subsections B of this section shall be acted upon by the City Commission. The City Commission shall grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable Federal regulations. If the request is granted, the ruling shall be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the City Commission denies the request, the City Commission shall take one (1) of the following actions:

1. If the information has been submitted voluntarily without any direction from the City, the cable operator may request that the City return the information

without considering it. Ordinarily the City shall comply with this request. Only in the unusual instance that the public interest so requires, shall the information be made available for public inspection.

2. If the information was required to be submitted by the City Commission, the information shall be made available for public inspection.

D. Appeal. If the City Commission denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the City Commission's decision, and the release of the information shall be stayed pending review. (Ord. 817 (part), 1994)

5.16.050 Automatic rate adjustments.

A. Annual Inflation Adjustment. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

B. Other External Costs.

1. The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, State and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost increase in a franchise fee may be automatically added to the base per channel rate without regard to its relation to the GNP-PI.

2. For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted shall be the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

C. Notification and Review. The cable operator shall notify the City at least thirty (30) days in advance of a rate increase based on automatic adjustment items. The City shall review the increase to determine whether the item or items qualify as automatic adjustments. If the City makes no objection within thirty (30) days of

receiving notice of the increase, the increase may go to effect. (Ord. 817 (part), 1994)

5.16.060 Enforcement.

A. Refunds. The City may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

1. A portion of the previously paid rates has been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or
2. The cable operator has failed to comply with a valid rate order issued by the City.

B. Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of five hundred dollars ($500.00) for each day the cable operator fails to comply. (Ord. 817 (part), 1994)

Chapter 5.20 TEMPORARY VENDORS

5.20.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Temporary" means any such business transacted or conducted in the City for which definite arrangements have not been made for the hire, rental or lease of premises for a term of at least thirty (30) days in or upon which such business is to be operated or conducted.

"Temporary vendor" means all persons, as well as their agents or employees, who do not maintain a valid business registration with the City Clerk and who engage in the temporary or transient business in the City of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale or who for the purpose of taking orders for the sale thereof and who for the purpose of carrying on such business or conducting such exhibits, either hire, rent, lease or occupy any room or space in any building, tent, structure, motor vehicle or other enclosure in the City or any other place whether enclosed or not within the City, in, on, through or from which any goods or merchandise may be sold, offered for sale, or exhibited for sale for the purpose of taking orders for the sale thereof.

"Transient" means such business of any such temporary vendor as may be operated or conducted by persons or by their agents or employees who have their

headquarters in places other than the City, or who move stocks of goods or merchandise or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of thirty (30) days. (Ord. 931 (part), 2004)

5.20.020 Required.

It is unlawful for any temporary vendor to sell, offer for sale, exhibit for sale or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the City without first obtaining a license therefor from the City. A person which falls within the definition of a temporary vendor as defined in this chapter shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or other person. (Ord. 931 (part), 2004)

5.20.030 Application.

A. Any person desiring a license required by this chapter shall make application therefor to the City Clerk at least five (5) days prior to the date of contemplated sale or exhibit in the City, which application shall be in the form of an affidavit stating the full name and address of the applicant, the location of his or her principal office and place of business, the applicant's current State Revenue Division taxpayer identification number or evidence of an application for the same, and such other information as the City Clerk finds necessary for the administration of this chapter. If the applicant is a corporation, the application shall give the names and addresses of its officers and, if a partnership, the partnership name and the names and addresses of all partners.

B. The application shall be accompanied by a statement showing the kind and character of the goods or merchandise to be sold, offered for sale or exhibited. (Ord. 931 (part), 2004)

5.20.040 Fee.

Before any license is issued under this chapter, the applicant therefor shall pay to the City Clerk a fee of five hundred dollars ($500.00) which sum shall be compensation to the City for the services required of it by this chapter and to enable the City to partially defray the expenses of administering and enforcing the provisions of this chapter. (Ord. 931 (part), 2004)

5.20.050 Issuance.

The City Clerk shall issue to any applicant a temporary vendor's license authorizing him or her to sell and exhibit for sale his or her goods and merchandise if such applicant has fully complied with all provisions of this chapter. (Ord. 931 (part), 2004)

5.20.060 Display.

Each license issued under this chapter shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit is being conducted and shall remain so displayed so long as any goods or merchandise are being sold or exhibited. (Ord. 931 (part), 2004)

5.20.070 Transfer—Authority of holder's agents.

A license issued under this chapter shall not be transferable nor given to any promoter or vendor not listed in the application for the license authority to sell or exhibit goods or merchandise as a temporary vendor, either by agent or clerk or in any other way than his or her own proper person, but any person having obtained such a license may have the assistance of one (1) or more persons in conducting the sale or exhibit, who shall have authority to aid the principal, but not to act for or without him or her. (Ord. 931 (part), 2004)

5.20.080 Term.

A temporary vendor's license issued under this chapter shall continue and be in force for a period not to exceed seven consecutive days for the sale of goods or merchandise between the hours of 8:00 a.m. and 8:00 p.m., which license shall expire at 8:00 p.m. on the seventh day. The fee required shall not be prorated or refunded. (Ord. 931 (part), 2004)

5.20.090 Exemptions.

This chapter shall not be applicable to:

A. Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business of buying, selling or utilizing such goods or merchandise;

B. Vendors of farm produce, poultry, stock or agricultural products in their natural state, including Christmas trees;

C. Sale of goods or merchandise donated by the owners thereof, the proceeds of which are to be applied to any charitable or philanthropic purpose;

D. Hobby shows, including but not limited to gun, coin, rock, stamp and mineral shows, where such shows are sponsored by or associated with the corresponding local hobby organization;

E. A person holding a valid business registration under Chapter 5.04, whose principal place of business is within the City, and who is subject to the business gross receipts tax under Chapter 5.08. (Ord. 931 (part), 2004)

5.20.100 Fee to be in lieu of occupation tax.

The license fee assessed in Section 5.20.050 shall be in lieu of, and shall excuse such temporary vendor from the payment of, any other license, occupation fees or taxes. (Ord. 931 (part), 2004)

5.20.110 Penalty.

Anyone found guilty of violating the provisions of this chapter shall be punished by a fine of up to five hundred dollars ($500.00) or imprisonment of up to ninety (90) days, or by both such fine and imprisonment. (Ord. 931 (part), 2004)

Chapter 5.24 JUNK YARDS AND JUNK DEALERS

5.24.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Junk dealers" means all persons engaged in the business of purchasing or selling secondhand or cast off material of any kind, commonly known as "junk," such as old iron, copper, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cords, babbing, rags, rubber, paper and other materials.

"Junk yard" in addition to its generally accepted meaning, shall be defined as any lot, block or area within the City limits wherein worn-out or discarded material, in general, is kept, stored or maintained for the purpose of storage, salvage or resale. (Prior code § 13-1)

5.24.020 Junk yards—Formal consent of City Commission required for operation.

It is unlawful for any person to operate or maintain a junk yard within the City limits, unless and until such person has secured the consent of the City Commission expressed by a formal resolution duly adopted. (Prior code § 13-2)

5.24.030 Junkyards—Enclosure—Maintenance.

After a person has secured the consent of the City Commission to operate a junk yard, such junk yard shall be enclosed by a fence of solid construction of boards, brick or other similar materials, not less than seven (7) feet in height above the level of the ground and maintained in a sightly, safe and secure condition, and the contents therein shall be maintained in such a manner as to prohibit the spread of disease and in accordance with the health standards of the State. (Prior code § 13-3)

5.24.040 Junk dealers—Compliance with chapter.

It is unlawful to engage in the business commonly known as that of a "junk dealer" or in the purchase and sale of secondhand goods of any kind or character within the City, except in accordance with the provisions of this chapter. (Prior code § 13-4)

5.24.050 Junk dealers—Records—Generally.

Every junk dealer shall maintain at all times a full and complete record, written in ink, containing a full and accurate description of each article purchased, together with a full name, residence and general description of the person selling the same and the license number and make of the vehicle in which such article was delivered to the purchaser. No entry made in such record book shall be erased, mutilated or changed, and no purchases shall be made by a junk dealer, without listing in such book the objects purchased by him or her at the time of the purchase. (Prior code § 13-5)

5.24.060 Junk dealers—Records—Filing with Chief of Police and county sheriff's office—Maintenance and retention on business premises.

Within thirty-six (36) hours after the purchase of any article, every junk dealer shall file with the Chief of Police and the county sheriff's office a true and correct copy of the record made by him or her at the time of the purchase of such article. No junk dealer shall remove any article so purchased from the corporate limits until thirty-six (36) hours after the receipt of such notice by the sheriff's office and the

Chief of Police. Such records shall be maintained in a bound book prepared for that purpose by each junk dealer and shall be retained on the premises of the business for a period of eighteen (18) months after the purchase of any article. (Prior code § 13-6)

5.24.070 Purchases from persons under eighteen.

It is unlawful for any junk dealer to purchase any article from any person under the age of eighteen (18) years, unless such person, at the time of the delivery of such article, is accompanied by his or her parent or duly appointed guardian, and in such event, the parent shall file with the dealer a written statement showing where the minor obtained the article sold. (Prior code § 13-7)

5.24.080 Signed statements from sellers.

Every junk dealer, before making any purchase, shall procure from the seller a signed statement showing when and where the object sought to be sold was obtained, together with a detailed description of the article. (Prior code § 13-8)

5.24.090 Hazardous accumulations.

It is unlawful for any junk yard or junk dealer to permit in or about his or her premises weed, briars, brush, unhealthful or harmful material of any kind, or any solid waste, that may become unsightly, hazardous or injurious to public health, or which obstructs pedestrian or vehicular traffic. (Ord. 880, 2001: prior code § 13-10)

5.24.100 Violations—Penalties.

Any junk dealer found guilty of violating this chapter, in addition to being punished for a misdemeanor, shall be notified of a hearing by the City Commission to determine whether his or her license should be cancelled as a result of such violation. Upon a determination at such hearing that his or her license should be cancelled, such junk dealer shall suffer the immediate cancellation thereof. (Prior code § 13-9)

Chapter 5.28 MINING PERMITS AND REGULATIONS

5.28.010 Definitions.

When used in this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Caliche pit" means an area of excavation when made for the purpose of extracting caliche rock.

"Mining activity" means any digging, excavation or other disturbance of the natural terrain when done for the purpose of extracting minerals, but not including the extraction of oil, natural gas or other petroleum products. (Prior code § 7A-1)

5.28.020 Mining permit—Required.

It is unlawful for any person or business entity to engage in or cause any mining activity, including the digging, construction or maintenance of a caliche pit, within the municipal boundaries of the City without first obtaining a permit pursuant to this chapter. (Prior code § 7A-2)

5.28.030 Permit—Application.

Any person or business entity wishing to apply for a permit to engage in mining activity within the City shall file an application with the Director of Public Works containing the following:

A. Name. The name of the person or business entity requesting the permit.

B. Address and Phone Number. The mailing address and phone number of the person or business entity requesting the permit.

C. Location. A street address and legal description for the property for which the permit is requested.

D. Map. Attached to the application must be a map showing the location, proposed and existing improvements (such as buildings, fences, etc.), and the relationship of the location to nearby streets, residential housing, public buildings (such as churches, schools, etc.), public utilities and the like.

E. Proposed Activity. A brief narrative describing the activities planned at the location, type of excavation, etc.

F. Compliance Statement. A statement to the effect that the applicant, or its representative if a business entity, is aware of the regulations contained in this chapter and will comply with those regulations. (Prior code § 7A-3)

5.28.040 Permit—Issuance or refusal.

The Director of Public Works shall issue a permit to the applicant within ten (10) days of receiving the application unless he or she makes a finding that:

A. The applicant, or its representative if a business entity, has willfully violated any of the provisions of this chapter within the past five (5) years; or

B. The proposed activity cannot be accomplished as described without violating the provisions of this chapter. (Prior code § 7A-4)

5.28.050 Permit—Appeal from refusal—Hearing.

Any applicant refused a permit may, within ten (10) days of receiving notice of such refusal, request a hearing before the City Commission on the question of whether a permit should be issued. The request should be made in writing to the City Clerk. Upon receiving such a request, the Clerk shall schedule the hearing on a date between ten (10) and thirty (30) days from the date of receiving the hearing request and shall notify all parties involved of the time, date and place of the hearing, If, after the hearing, the Commission finds a permit should be issued, the Director of Public Works shall issue a permit. (Prior code § 7A-5)

5.28.060 Permit—Period of validity—Revocation—Appeal.

A. Once issued, a permit shall be valid until revoked as provided herein. The Director of Public Works shall revoke a permit if he finds:

1. The applicant has willfully violated any of the provisions of this chapter; or

2. The applicant has deviated from the activities and plans presented in the application or is no longer actively pursuing such activities.

B. Anyone whose permit is revoked as provided herein shall have the right to an appeal and hearing requested and conducted a provided in Section 5.28.050. (Prior code § 7A-6)

5.28.070 Fencing required.

No mining activity shall be conducted until and only if the site of such activity is completely enclosed by a fence of not less than five (5) feet in height and constructed and maintained so as to be free of any openings less than five (5) feet from ground level which are greater than six (6) inches across in any direction. (Prior code § 7A-7)

5.28.080 Restrictions on hours of operation.

No mining activities shall be conducted within the City between the hours of 9:00 p.m. and 7:00 a.m. (Prior code § 7A-8)

5.28.090 Dust.

No mining activities shall be conducted within the City so as to cause dust from the site involved to be blown onto adjoining land in greater quantities than if the land had been left in its natural condition. (Prior code § 7A-9)

5.28.100 Accumulation of water.

No person conducting mining activities shall permit water to accumulate on the mining site. Proof that water has been standing more than forty-eight (48) hours shall constitute prima facie evidence of a violation of this section. (Prior code § 7A-10)

5.28.110 Pollution of underground water.

No person shall conduct mining activities in such a manner so as to pollute underground water. (Prior code § 7A-11)

5.28.120 Distance from public ways.

No mining activities shall be conducted within fifty (50) feet of any roadway, street, alley or public way. (Prior code § 7A-12)

5.28.130 Lateral support of adjoining lands.

No mining activities shall be conducted so as to weaken the lateral support of adjoining lands. (Prior code § 7A-13)

5.28.140 Violation—Penalty.

Anyone found guilty of violating any of the provisions of this chapter shall be punished as provided in Section 1.16.010. (Prior code § 7A-14)

Chapter 5.32 PAWNBROKERS AND SECONDHAND DEALERS

5.32.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Identification" means a valid current driver's license or other photo identification card.

"Pawn" means to loan money on goods, with the owner having a right of redemption or repurchase of the goods after a fixed waiting period.

"Pawnbroker" means a person engaged in the business of making pawn transactions.

"Pawnshop" means the location or premises at which a pawnbroker regularly conducts his or her business.

"Pawn transactions" means either the act between a pawnbroker and a person pledging a good or lending money or extending credit on the security of pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price.

"Person" means any individual, corporation, partnership or other recognized entity capable of doing business in the State.

"Store" means any secondhand store or junkshop engaging in the business of buying and reselling used merchandise or goods. (Prior code § 21-1)

5.32.020 License and registration required—License fee and expiration—Ineligibility of persons convicted of felonies.

A. Every pawnbroker shall obtain a pawnbroker license from the City Clerk, and such license shall be conspicuously displayed in the pawnbroker's place of business. Upon obtaining the license, every pawnbroker shall register with the City Police Department.

B. Every store owner shall obtain a license to operate a store from the City Clerk.

C. A fee of fifty dollars ($50.00) shall be paid to the City Clerk for each license.

D. Notwithstanding the provision set forth in subsection C of this section, all persons who obtain a license on January 1,1986, shall pay a fee of twenty-five dollars ($25.00) and this transitional license shall expire on June 30, 1986. All persons obtaining licenses July 1, 1986, and thereafter, shall pay a fee as set forth in subsection C of this section.

E. Licenses will expire on July 1st of each year and must be renewed by that date.

F. No person who has been convicted of a felony shall be eligible for a pawnbroker license. (Prior code § 21-2)

5.32.030 Bond.

No person shall engage in business as a pawnbroker without having executed and delivered a bond to the City Clerk in the sum of five thousand dollars ($5,000.00). The bond shall be in a form approved by the City Clerk and shall be conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawnbrokers Act, 56-12-1 to 56-12-16, NMSA, 1978. (Prior code § 21-3)

5.32.040 Application for license.

A. Each application for an original or renewal license shall be submitted in writing to the City Clerk and contain such information as the City Clerk requires and be accompanied by the license fee amount.

B. Each application shall be accompanied by name, social security number, address and date of birth of each agent, servant and employee of the applicant engaged in the business of pawn transactions or purchase of used merchandise or goods. Changes in such list must be indicated on each renewal application.

C. Each pawnbroker shall furnish with each application for an original or renewal license proof of execution and delivery of the bond to the City. (Prior code § 21-4)

5.32.050 Records.

A. Every pawnbroker and store owner shall each day accurately complete a report of all used property of every kind received as a pledge or purchase during the preceding business day. The report shall include the following:

1. Name of item;
2. Description of item, including make and model number, if any;
3. Serial number and other identifying marks, if any;
4. Amount of loan or purchase price;
5. Pawn ticket or bill of sale number or purchase invoice number;
6. Date, time and type of transaction;
7. Name and address of person offering the item;
8. Description of person offering item, including sex, complexion, color of hair and eyes, approximate weight and height and date of birth;

9. Type of identification used by person offering item and identifying number of such identification. If the person presents a driver's license or Motor Vehicle Department identification, the report shall indicate state of issuance.

B. All records required by this section shall be open and available at all times to inspection by the police officers of the City or any other authorized law enforcement officer of the State. The Chief of Police or any police officer of the City or any law enforcement officer of the State shall have the right of inspection, together with the right to obtain and keep a copy of the record of the transaction of each article taken in as a pledge or purchase by the pawnshop or store, and it is a violation of this chapter to refuse such officers the right to inspect the merchandise and records and obtain a copy of all transactions.

C. All records required by this section shall be completed accurately and be made available by twelve noon of the day following the day of the pawn transaction.

D. Each item pledged to or purchased by a license holder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record. (Prior code § 21-5)

5.32.060 Prohibited acts.

A. No person shall operate a pawnshop or a store without having obtained a license from the City Clerk.

B. It is unlawful for the owner of any store, or the manager or employee thereof, to purchase for the purpose of resale, or to loan money to any person for the purpose of pawning, any used merchandise, article or thing without first requiring identification from the seller or pawner and maintaining records of such transaction on a ledger form furnished by the Police Department, to be kept by the owner at his or her place of business. The record of all transactions shall be kept in a legible manner, and such record shall be maintained for a period of twenty-four (24) months. One (1) copy of the ledger shall be retained by the business, one (1) copy shall be given to the person dealing with the store and one (1) copy shall be given to the Chief of Police or his or her representative. The ledger shall contain information as set forth in subsection A of Section 5.32.050.

C. It is unlawful for any operator of a pawnshop or store to buy any property of any kind or receive the same as a pledge, which property is distinctly and plainly marked as being the property of any firm or corporation or person other than the party offering to sell or pledge the same, or which property has had the manufacturer's

name plate, serial number or identification mark defaced, altered, covered or destroyed, unless the party offering to sell or pledge the same shall show satisfactory evidence in writing that he is the legal and lawful owner of such property. Failure to require such written evidence shall be prima facie evidence of guilty knowledge on the part of such operator of the store, or his or her agents or employees, that the party offering to pledge or sell the same is not the rightful owner thereof and shall be sufficient cause for the revocation of the license of such store by the City after a public hearing. (Prior code § 21-6)

5.32.070 Violations—Penalties.

Any person found guilty of violating any of the provisions of this chapter shall be punished, upon conviction thereof, by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a period not exceeding ninety (90) days, or by both such fine and imprisonment. (Prior code § 21-7)

5.32.080 Exceptions.

The provisions of this chapter do not apply to any business operated solely for the purpose of dealing in used furniture, household appliances, automobiles and dishware. (Prior code § 21-8)

5.32.090 Suspension or revocation of license.

A. The governing body of the City may institute proceedings for the suspension or revocation of any license issued pursuant to this chapter upon the filing of a written complaint by the City Police Department or the attorney general charging the license holder, or an employee thereof, with a violation of any provision of this chapter or the Pawnbrokers Act.

B. The governing body of the City shall serve written notice of the alleged violation upon the license holder. The notice requirement is satisfied if personal service of the notice is had upon the holder of the license or if such notice is posted in a conspicuous place upon the license holder's place of business.

C. The governing body of the City shall set a date for hearing on the complaint, not more than ten (10) days nor less than five (5) days after the date of notice, unless waived by all parties thereto. The notice provided for in subsection B of this section shall specify the date and time of the hearing.

D. The license holder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The rules of evidence shall not apply. If, after holding this hearing, the governing body of the City determines that the license holder is in violation of the provisions of this chapter or the Pawnbrokers Act as charged in the complaint, the governing body shall issue a written order. The order may suspend the license for a stated period of time or permanently revoke the license. The governing body of the City shall cause such order to be served upon the license holder and filed in the office of the City Clerk for public inspection within five (5) business days after the hearing. Service of the order on the license holder shall be as specified in subsection B of this section, and the official serving the order shall have the authority to remove the license from the premises and deliver that license to the City. This hearing shall be the final administrative remedy. (Prior code §)

Chapter 5.36 SOLICITORS

5.36.010 Solicitors defined.

A "solicitor" means a person who goes from door to door visiting single-family or multifamily dwellings and businesses, or who is on the streets and parking lots of the City for the following purposes:

A. To sell any goods, wares, merchandise or services, or to accept subscriptions or orders thereof;

B. To accept or request donations for any charitable purpose. (Prior code § 23-1)

5.36.020 License required.

All persons, before entering into or upon a residential or business premises or the streets and parking lots within the City for the purpose of soliciting, shall make application with the City Clerk and furnish the following information:

A. The name, local and permanent addresses, social security number, driver's license number, age, race, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant;

B. The names, addresses and telephone numbers of persons or the officers, directors or registered agents for service of the organization, group, association, partnership or corporation who is the employer of or entity represented by the applicant;

C. The nature of the goods, wares, merchandise or services offered for sale or the purpose for which solicitations will be made;

D. Three (3) one-inch by two-inch photographs of the applicant, taken within six (6) months immediately prior to the date of the filing of the application, showing the head and shoulders of the applicant in a clear and distinguishing manner;

E. The fingerprints of the applicant which will be taken and kept on file at the Hobbs Police Department;

F. Completion of a statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance in the preceding five (5) years, the nature of the offense and the punishment or penalty assessed therefor. (Prior code § 23-2)

5.36.030 License—Issuance.

A. Upon receipt of the application, the original shall be referred to the Chief of Police, who shall cause such investigation into the applicant's business and moral character to be made as he deems necessary for the public good. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall signify his or her approval on the application and return the application to the City Clerk who shall, upon payment of the prescribed fee, deliver the license to the applicant.

B. A license issued under this chapter shall be issued for the calendar year unless earlier revoked as provided in this chapter. Every solicitor shall carry his or her license with him or her at all times while engaged in soliciting and shall display the same to any person who demands to see such license while he or she is so engaged. (Prior code § 23-3)

5.36.040 License—Fee.

A fee of twenty-five dollars ($25.00), to cover the cost of the investigation of the applicant and processing of the application, shall be paid to the City Clerk when the application is filed and shall not be returnable under any circumstances. The fee may not be prorated for solicitations conducted for a portion of the year. (Prior code § 23-4)

5.36.050 Revocation.

Licenses issued under the provisions of this chapter may be revoked by the City Manager, after notice and hearing, for any one (1) of the following reasons:

A. Fraud, misrepresentation or false statement contained in the application for the license;

B. Fraud, misrepresentation or false statement made in the course of conducting business as a solicitor;

C. Conviction of any crime or misdemeanor involving moral turpitude;

D. Conducting the business of soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public;

E. Any violation of this chapter. (Prior code § 23-5)

5.36.060 Prohibited acts.

It is unlawful for any person to:

A. Enter into or upon a residential or business premises or the streets and parking lots within the City under false pretense to sell any goods, wares, merchandise or services, or to solicit for any purpose;

B. Remain in or on any residential or business premises after having been requested to leave by the owner or occupant thereof;

C. Enter upon any residential or business premises to solicit, when the owner or occupant has displayed a "No Soliciting" sign on such premises;

D. Engage in the practice of soliciting in the City without a license as provided for in this chapter;

E. Knowingly give false information or fail to give information when obtaining the license required by this chapter;

F. Use or possess an altered, forged or fictitious solicitor's license. (Prior code § 23-6)

5.36.070 Exceptions.

The provisions of this chapter shall not apply to:

A. Any person who visits any residence, apartment or business at the request or invitation of the owner or occupant thereof;

B. Unpaid members of any civic or charitable organization who have an approved means of identification provided by such organization or who upon request can provide identification of the relationship with the civic or charitable organization;

C. Newsboys soliciting subscriptions to any newspaper for home delivery within the City;

D. Route delivery persons who make deliveries at least once a week to regular customers and whose solicitation is incidental only to their regular deliveries and permanent local business entities whose periodic solicitations are incidental to their regular business activities. (Prior code § 23-7)

Chapter 5.40 TAXICABS

Article 1 In General

5.40.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Owner" means any person who holds the legal title of a motor vehicle or, in the event a vehicle is subject to an agreement for the conditional sale thereof, with the right of purchase by the performance of the conditions stated in the agreement and with immediate right of possession vested in the conditional vendee, such conditional vendee shall be deemed the "owner."

"Street" means any street or alley in the City, by whatever name called, dedicated for public use or used by the public as if such dedication is so desired.

"Taxicab" means any motor vehicle used for the transportation of passengers for hire between two (2) points in the City, or the suburbs thereof, but not including: (1) vehicles moving on fixed rails; (2) vehicles used for mass transportation and of the size and design commonly called "buses" and moving on fixed routes and schedules; (3) vehicles operating under the authority of the Interstate Commerce Commission or the State Railroad Commission; (4) vehicles which are rented to another and in the possession and control of the person renting the same, the services of a driver not being furnished therewith; or (5) vehicles not used in the business of transportation but used occasionally for the transportation of selected passengers by private and special arrangement.

"Taxi stand" means any office, station, stand, building, vacant lot or other place of business at which calls are or may be received from prospective passengers for hire, and to which the owner or driver of any taxicab may report to receive calls for taxicab service, but not including subterminals where the drivers of taxicabs receive calls only from a licensed taxi stand. (Prior code § 26-1)

5.40.020 Inspections.

Taxicabs shall be inspected in accordance with State law. Copies of maintenance and repair records required by the State relating to each such licensed taxicab shall be furnished to the City Clerk within seven (7) days of written request therefor. If such records indicate that a taxicab may be in a mechanical condition unsuitable for safe operation, the taxicab shall be delivered to the City garage for inspection. If such taxicab is found unsafe for operation on the public streets, the Chief of Police may order the same withdrawn from service until repairs have been made putting the vehicle in safe condition for operation as a taxicab. No person shall operate such vehicle as a taxicab, or cause the same to be so operated, until such repairs are made. (Ord. 879 § 1, 2001: prior code § 26-2)

5.40.030 Owner's name and license number to be painted on cab—License to be posted in cab.

A. Every taxicab shall have painted on the door thereof, or on a plate attached to such taxicab in a conspicuous place, the name of the owner or the assumed name of the stand from which such taxicab operates, and the telephone number of such stand. Such letters and numbers shall not be less than two and one-half ($2^1/_2$) inches in height, and the lines constituting such letters and numbers shall not be less than five-sixteenths ($^5/_{16}$) of an inch broad.

B. Every taxicab shall have the letters "C .L.," followed by the number of the taxicab license of such taxicab painted on the lower right hand side of the back of such vehicle, in such position as not to be obscured by bumpers, State license plates or any other object. Such letters and numbers shall be not less than three (3) inches in height, and the lines constituting such letters and numbers shall not be less than one-half ($^1/_2$) inch broad. Such letters and numbers shall be of a color so contrasting with the background that the same shall be plainly visible to the normal eye in daylight at a distance of one hundred (100) feet.

C. There shall be posted in each taxicab, in a place readily visible to the passengers therein, the taxicab license issued for such taxicab, the City chauffeur's license issued to the driver thereof and a statement that such driver is operating

such taxicab as the agent and employee of the owner thereof. (Prior code § 26-3)

5.40.040 Duty to accept and complete calls.

Every call for taxicab service from a person entitled to demand the same shall be accepted, if there is a taxicab on duty not already engaged by another passenger, and every call accepted shall be completed without delay. (Prior code § 26-4)

5.40.050 Records.

The person in charge of any taxi stand shall keep permanent records of every call received by telephone at such stand and every service performed therefrom, showing the exact time of such call or service, the place thereof, the driver who answered the call and the time of the driver's departure and return. Such records shall be open to public inspection and shall be preserved for at least two (2) years from the making thereof. (Prior code § 26-5)

5.40.060 Reports of disciplinary action.

The person in charge of any taxi stand shall promptly report in writing to the Chief of Police any action taken by such taxi stand against the owner or driver of any taxicab for any violation of the rules of any such taxi stand. (Prior code § 26-6)

5.40.070 Insurance.

A. No City taxicab license shall be issued or renewed, unless the owner of such taxicab shall have filed with the City Clerk a policy of insurance as set forth in this section. After approving such policy, the City Clerk shall deliver the same to the Chief of Police, who shall keep the same on file while it remains in force and for two (2) years thereafter. If the owner of such taxicab shall fail to keep such policy in full force and effect, the City taxicab license of such taxicab shall thereupon automatically become void.

B. Such policy shall be issued by an insurance company duly authorized to do business in the State and shall be approved by the City Attorney as to form and by the City Clerk as to sufficiency. Such policy shall provide in substance that the insurer will pay on behalf of the insured any final judgment of a court of competent jurisdiction against the owner or operator of such taxicab for the negligent operation thereof and that the maximum amount recoverable under such policy shall not be less than ten thousand dollars ($10,000.00) for death of or injury to any one (1) person in any one (1) accident, twenty thousand dollars ($20,000.00) for death of or injury to two (2) or more persons in any one (1) accident and five thousand dollars

(5,000.00) for property damage. Such policy shall insure to the benefit of any person in whose favor such judgment may be rendered but may contain a provision that suit against the insurer may not be brought until the insured has failed to pay the final judgment of a court of competent jurisdiction against the owner or operator of such taxicab.

C. Such policy shall contain a provision that it may not be cancelled, revoked or annulled by the insurer, without giving ten (10) days' written notice thereof to the City Clerk. The insured shall not surrender or release such policy, without filing in lieu thereof another policy complying with the requirements of this section or surrendering his or her taxicab license and all indicia thereof.

D. If the City Clerk shall determine that such policy has become impaired so as to fail to afford the protection to the public contemplated by this chapter, he shall require new or additional insurance by giving written notice to the insured, who shall, within five (5) days after receiving such notice, provide such new or additional insurance.

E. Any release executed by or on behalf of any person suffering damage by reason of the negligent operation of a taxicab shall be filed with the City Clerk by the person in whose favor such release is executed, within ten (10) days of such execution.

F. Neither the City nor any officer or employee thereof shall be liable for the financial responsibility or solvency of any insurer, or in any manner become liable for any claim or act or omission relating to any taxicab or the insurance thereon. (Prior code § 26-7)

5.40.080 Violations—Penalties.

Any person violating any provisions of this chapter shall be deemed guilty of a misdemeanor and punished as provided in Section 1.16.010; provided, that if any act prohibited by this chapter is also an offense under the laws of the State, punishable thereunder by a different penalty from that imposed by this code, such act shall not be deemed to be a penal offense under this code, but such act shall be grounds for revocation or suspension of any license or permit issued under this chapter. (Prior code § 26-8)

Article 2 Licenses

5.40.090 Required—Application—Fee—Proration—Expiration.

Any person, being the owner of one (1) or more motor vehicles which he or she desires to operate as taxicabs upon the streets of the City, shall make application in

writing, under oath, to the City Clerk for a taxicab license. There shall be included in such application the names of all owners of such business, with the interest of each owner in such business. If the applicant is a corporation, such application shall recite the names of the principal officers and the manager of such business. Such application shall also State the location of the principal office in the city from which such business shall be transacted, together with the locations of all branch offices, if any, the number and descriptions of all motor vehicles which will be operated as taxicabs by such person, including the year, model, body type, motor number, serial number, if any, and the State motor vehicle license plate number under which each such motor vehicle will be operated for the period to be included in the permit applied for. Each application shall be accompanied by the fee for such license, which fee shall be computed upon the basis of ten dollars ($10.00) for each such taxicab business.

The license fee required by this section shall be prorated, so that any license issued prior to the first day of July shall be subject to the full amount of the annual license fee, while licenses issued on or subsequent to the first day of July shall be subject to one-half (1/2) of the annual license fee. All licenses issued shall expire on December 31st, regardless of the date issued. (Prior code § 26-9)

5.40.100 Determination of public convenience and necessity—Certificate of public convenience and necessity.

As soon as practicable after the filing of an application for a taxicab license in proper form, the Chief of Police shall fix a time and place for a public hearing on the question whether the public convenience and necessity requires the proposed taxicab service. Notice of such hearing shall be given by posting the same at a conspicuous place in the City hall or near the door thereof. Such notice shall state that an application for a taxicab license has been filed, the name of the applicant and the time and place of the hearing, which shall be at some public place in the City not less than five (5) or more than fifteen (15) days after the posting of such notice. Any person may file with the Chief of Police a written protest against issuance of such license. The applicant, and any person filing such protest, shall be entitled to introduce evidence and be heard at such hearing, and the Chief of Police may call such other witnesses as he or she sees fit. The burden of proof shall rest upon the applicant to show that the public convenience and necessity requires the service proposed. The existing and probable future demand for taxicab service, the adequacy of the existing service, the effect of additional service on traffic conditions in the public streets, suitability of the proposed equipment and any other matters

legally material shall be considered in determining whether a certificate of public convenience and necessity should be granted. The Chief of Police shall certify his findings to the City Clerk and shall notify the applicant and any person who has filed a protest, and the applicant or person filing a protest may appeal in writing to the City Commission within ten (10) days after the rendition of such decision. The City Commission shall, as soon as practicable, hold a hearing on such appeal after giving notice of the time and place thereof to the applicant and any person who has filed a protest, and shall certify its findings to the City Clerk. If no appeal is taken within ten (10) days, the decision of the Chief of Police shall be final; otherwise, the decision of the City Commission shall be final. (Prior code § 26-10)

5.40.110 Written agreements as to agents and employees prerequisite to issuance.

Before any taxicab license, or renewal or transfer thereof, is issued, the owner shall file with the City Clerk a written agreement that any person operating a vehicle under such license with the owner's acquiescence or consent, expressed or implied, shall be deemed an agent and employee of the owner, and the owner will be responsible for the acts or omissions of such person to the same extent as if such person were in fact the agent and employee of the owner. Such agreement shall be for the benefit of, and shall be available to, any person asserting any right against the owner under the doctrine of respondent superior. The City Clerk shall deliver such agreements to the Chief of Police for safekeeping, as in the case of insurance policies under Section 5.40.070. (Prior code § 26-11)

5.40.120 Expiration—Renewal.

Each taxicab license shall expire on the thirty-first day of December following the date of issuance. Such license, if not revoked, may be renewed upon written application to the City Clerk, verified by affidavit or information given in the original application and showing any changes which have occurred in the facts stated therein. The City Clerk shall transmit to the Chief of Police any application showing changes in such information, or a copy thereof. No certificate of convenience and necessity or hearing thereon shall be required for the renewal of a taxicab license, if such taxicab business has been in actual bona fide operation as such, during the whole time for which the outstanding license for such business was issued. If a taxicab license is under suspension when renewed, the renewal license shall likewise remain suspended, until the suspension imposed on the prior license has expired. (Prior code § 26-12)

5.40.130 Transfer.

A taxicab license may be transferred to a different owner only by permission of the City Commission. Application for such transfer shall be in writing, verified by the affidavits of the holder of such license and of the person to whom the transfer is proposed to be made, and shall show fully the terms of the agreement between such parties and the reasons for such proposed transfer. The City Commission shall, after reasonable notice to the parties and to the public, by posting such notice at a conspicuous place in the City hall or near the door thereof, hear such application and shall grant the same, if it finds that the proposed transferee is a suitable person to be granted a license upon an original application, that the holder of such license has actually operated a born fide taxicab business thereunder for at least one (1) year immediately prior to the application for transfer, or was prevented from so operating by the holder's death, disabling illness or insolvency, and that such proposed transfer is not for the purpose of evading the requirements of a certificate of convenience and necessity. (Prior code § 26-13)

5.40.140 Suspension or revocation—Generally—Appeal.

The City Commission shall have the right, upon reasonable notice and opportunity to be heard, to revoke or to suspend for any period of time any license issued under the provisions of this article, on any of the following grounds:

A. That the holder of such license or permit has made any false statement in his or her application therefor, or failed to comply with any prerequisite to the issuance thereof;

B. That the holder thereof has been convicted of a felony or any misdemeanor involving moral turpitude;

C. That the holder thereof has violated any provision of this code, whether convicted or not.

Whenever the City Commission revokes or suspends a license pursuant to this section, the holder of such license has the absolute right to appeal within five (5) days to the City Commission which shall hear the case de novo. (Prior code § 26-14)

5.40.150 Effect of revocation.

When a license issued pursuant to this article has been revoked, the holder thereof shall be ineligible for five (5) years to hold any license under the provisions of this code, without permission of the City Commission. (Prior code § 26-15)

Chapter 5.44 ALCOHOLIC BEVERAGES

Article 1 In General

5.44.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Alcoholic liquors" means all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin or any similar alcoholic beverages, including all blended and fermented beverages, dilutions or mixtures of one (1) or more of the foregoing, containing more than one-half of one (0.5) percent alcohol.

"Club" means an organization of persons organized or operated under the laws of the State, operated for nonprofit service to members, with a membership of not less than fifty (50) regularly admitted and enrolled members who have paid membership dues at a rate of not less than five dollars ($5.00) per year, which the owner licensee or occupant of the premises used exclusively for club purposes and which, in the judgment of the City Commission, is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes.

"Dispenser" means any person selling or offering for sale, or having in his possession with intent to sell, alcoholic liquors by the drink or in packages containing less than five (5) gallons.

"Package" means any container or receptacle used or intended for the purpose of containing alcoholic liquors, beer or wine as marketed by the manufacturer.

"Retailer" means any person selling or offering for sale, or having in his possession with intent to sell, any alcoholic liquors in unbroken packages, containing less than five (5) gallons. (Prior code § 4-1)

5.44.020 Sale, etc., prohibited, except in compliance with chapter.

The sale, or possession for the purpose of sale or offering for sale, of alcoholic liquors, beer or wine hereby is prohibited in the City, except upon the terms and conditions established in this chapter. (Prior code § 4-2)

5.44.030 Permitting consumption on licensed premises—Selling at place other than regular place of business or in other than original container, etc.

No person licensed as a retailer of alcoholic liquors according to the provisions of this chapter shall permit any alcoholic liquors to be drunk or consumed upon his premises, nor shall he sell such alcoholic liquors at any other place than his regular place of business. All such alcoholic liquors so sold shall be sold at such retail store in the original bottle, or other container of less than five (5) gallons, in which they are received from the wholesaler and upon which the United States tax has been paid, and upon which the State tax stamp is affixed. (Prior code § 4-3)

5.44.040 Hours of sale.

It shall be unlawful for the holder of any license issued under the terms and provisions of this chapter to sell or give away any kind of alcoholic liquor on any weekday between the hours of 2:00 am. and 7:00 am., or on any election day during voting hours, or on any Sunday after 2:00 a.m.; provided, that the sale of liquor by the drink on Sunday shall be permitted. (Ord. 867, 2001: Prior code § 4-4)

5.44.050 Consuming or permitting consumption on licensed premises during prohibited hours.

It shall be unlawful for the holder of any license issued under the terms and provisions of this chapter to permit the consumption of alcoholic liquors on the premises during the hours prohibited by this chapter, and it shall be unlawful for any person to consume alcoholic liquors on a licensed premises after the hours prohibited by this code. (Prior code § 4-5)

5.44.060 Drinking in public places generally—Curb service.

It shall be unlawful to drink or to use alcoholic liquors, or for any person who is the owner or operator to sell, serve or furnish or permit the drinking, or use of any alcoholic liquors, in any public dance hall, poolroom, bowling alley, street or municipal, State or Federal building, or in any other public place, except establishments having a license to dispense alcoholic liquor. It shall be unlawful for any establishment having a license to dispense alcoholic liquors to give curb service, or to serve or sell liquor in any manner outside of the building on the premises at which such business is operated. (Prior code § 4-6)

5.44.070 Sale, etc., to or purchase by persons under twenty-one.

It shall be unlawful for any person to knowingly serve or sell alcoholic liquor, wine or beer to any person under the age of twenty-one (21) years or for any person under the age of twenty-one (21) years to purchase alcoholic liquor, beer or wine. (Prior code § 4-7)

5.44.080 Purchasing, attempting to purchase, receiving, possessing, or permitting persons over the age of seventeen years but under the age of twenty-one years to be served with any alcoholic beverages.

A. It shall be unlawful for any person over the age of seventeen (17) years but under the age of twenty-one (21) years to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverages.

B. A violation of the provisions of Subsection A of this section is a misdemeanor and the offender shall be punished as follows:

(1) For a first violation, the offender shall be:

(a) Fined an amount not more than two hundred fifty dollars ($250.00); and

(b) Ordered by the court to perform thirty (30) hours of community service;

(2) For a second violation, the offender shall:

(a) Be fined an amount not more than three hundred fifty dollars ($350.00):

(b) Be ordered by the court to perform forty (40) hours of community service; and

(c) Have his driver's license suspended for a period of ninety (90) days. If the minor is too young to possess a driver's license at the time of the violation, then ninety (90) days shall be added to the date he would otherwise become eligible to obtain a driver's license; and

(3) For a third or subsequent violation; the offender shall:

(a) Be fined an amount not more than five hundred dollars ($500.00);

(b) be ordered by the court to perform sixty (60) hours of community service; and

(c) Have his driver's license suspended for a period of two (2) years or until the offender reaches twenty-one (21) years of age, whichever period of time is greater. (Prior code § 4-7.1)

(Ord. No. 1009, 2-23-2009)

5.44.090 Penalties.

Any person found guilty of violating any of the terms of this chapter shall be punished as provided in Section 1.16.010. In addition, any licensee found guilty of violating any of the terms of this chapter may have his license canceled or forfeited. (Prior code § 4-8)

Article 2 Licenses*

5.44.100 Issuance to certain persons prohibited.

The following classes of persons shall be prohibited from receiving licenses under the provisions of this chapter:

A. Persons who have not been issued a license by the State Department of Alcoholic Beverage Control for the same period and of the same class as that applied for.

B. Persons who have been convicted of a felony.

C. A person under the age of twenty-one (21) years.

D. A person who is not a citizen of the United States.

E. A corporation which is not qualified to do business in the State.

F. A person who is not the real party in interest in the business to be conducted under such license. (Prior code § 4-9)

5.44.110 Application—Affidavits concerning persons owning interest in business or stockholders of corporation.

A. Before any license provided for in this article shall be issued by the City Commission, the applicant therefor shall submit a written application for such license, which application shall be in the form to be prescribed by the City Commission and shall State under oath such information as shall be required by the City Commission.

B. All applicants for licenses under this article, or licensees, other than corporate licensees, shall be required, at the time of making application for a license and at any other time when called upon by the City Commission, to make an affidavit setting forth the names and addresses of all persons owning any interest whatsoever in the business, whether such interest is a working interest or capital interest

***Note—**Editors note: As to licenses and occupation taxes generally, see Section 5.08.010 of this code.

C. All applicants for corporate licenses, or corporate licensees, shall be required, at the time of making application for a license and at any other time when called upon by the City Commission to make an affidavit setting forth the names and addresses of all stockholders.

D. The failure of any applicant for a license, or licensee, to comply with the terms of subsections B or C of this section, as applicable, shall be cause for cancellation and forfeiture of such license, and no new license for the sale of alcoholic liquors shall be granted to the licensee or, in the case of a corporate licensee, to any stockholder of such corporation, for a period of two (2) years. (Prior code § 4-10)

5.44.120 Investigation of applicant and premises.

Before the issuance of any license provided for in this article or the transfer of such license as to person or location as provided in this article, the City Commission shall make a thorough investigation concerning the character and integrity of the applicant and shall make a thorough investigation of the conditions existing in the community wherein are located the premises for which the license is sought, to the end that no license shall be granted where the issuance thereof shall result in the impairment of the public health and morals of any community. (Prior code § 4-11)

5.44.130 Expiration—Renewal—Proration of fees.

All licenses provided for in this article shall expire on June 30th of each year and may be renewed from year to year under the rules and regulations of the City Commission. License fees provided for in this article shall be prorated, so that licenses issued prior to the first day of October of each year shall be subject to the full amount of the annual fee, licenses issued subsequent to the first day of October and prior to the first day of January of each year shall be subject to three-fourths (3/4) of the annual fee, licenses issued subsequent to the first day of January and prior to the first day of April shall be subject to one-half (1/2) of the annual fee and licenses issued subsequent to the first day of April of each year shall be subject to one-fourth (1/4) of the annual license fee. (Prior code § 4-12)

5.44.140 Classification.

There shall be three (3) classes of liquor licenses issued in the City, which shall be dispenser's license, retailer's license and club license. A dispenser's license shall entitle the holder thereof to sell all alcoholic liquors by the drink and in packages containing less than five (5) gallons. A retailer's license shall entitle the holder thereof to sell all alcoholic liquors in unbroken packages containing less than

five (5) gallons for consumption off the premises of the licensee. A club license shall entitle the holder thereof to sell to members only, their spouses and guests, alcoholic liquors, beer and wine by the drink for immediate consumption on the premises or beer or wine by the can or bottle for immediate consumption on the premises. (Prior code § 4-13)

5.44.150 Qualifications of licensees.

Any person not otherwise prohibited by the provisions of this code or the laws of the State may be issued a dispenser's license or retailer's license. Any club not otherwise prohibited by the provisions of this code or the laws of the State may be issued a club license. (Prior code § 4-14)

5.44.160 Fee schedule (local liquor license tax).

The fees for licenses issued pursuant to this chapter shall be as follows:

A. Dispenser's license $250.00

B. Retailer's license $250.00

C. Club license $250.00

D. Beer and wine license..... $250.00

1. In addition to any license fee required, any applicant for the issuance or transfer of any license, including the issuance of a beer and wine license, made pursuant to § 60-6B-1 et seq., N.M.S.A., 1978, shall pay upon receipt of the application by the City Clerk an administrative handling fee of two hundred fifty dollars ($250.00) which includes publication costs.

2. Failure to submit the required fee prior to the review of the transfer or issuance of the liquor license held pursuant to § 60-6B-4 et seq., N.M.S.A., 1978, shall be grounds for denial of the application. (Ord. 896, 2002: prior code § 4-15)

5.44.170 Disposition of proceeds.

All money derived from the sale of licenses pursuant to this article shall be placed in the general fund. (Prior code § 4-16)

5.44.180 New license required upon sale of interest in business.

In the event a license issued pursuant to this chapter is granted to an individual or partnership and such individual or partnership later and during the license year sells

an interest, in whole or in part, in such business to another person, a new license shall be required, and credit shall be allowed for the unexpired portion of the original license fee paid. (Prior code § 4-17)

5.44.190 Transfer.

No license issued under the provisions of this chapter shall be transferred as to person or location without the consent of the City Commission. (Prior code § 4-18)

Chapter 5.48 STREETS AND SIDEWALKS SALES

5.48.010 Permit—Required.

It shall be unlawful for any person either transitory or permanently established within the City, to advertise, sell or solicit the sale of merchandise from parked vehicles, stands or booths on the City's streets or sidewalks, unless and until such person has acquired a permit to so advertise, solicit and sell such merchandise from the City Clerk. (Prior code § 24-37)

5.48.020 Permit—Fee; issuance; term; display; assignment or transfer.

There is imposed upon any person engaged in the business of advertising, soliciting or selling merchandise on the City streets and sidewalks a permit fee in the sum of five dollars ($5.00) per day. Upon receipt of such fee, the City Clerk will issue a permit, which will be valid for the period set forth on the permit. Such permit shall be displayed and visible at all times when the permittee is utilizing such streets and sidewalks. Such permit shall not be assignable or transferable. (Prior code § 24-38)

Chapter 5.50 SYNTHETIC INTOXICANTS

5.50.010 Short title.

This chapter may be cited as the "Synthetic Intoxicant Ordinance."
(Ord. No. 1057, 12-3-2012)

5.50.020 Purpose and intent.

A. A product commonly referred to as "spice" is sold by local businesses. Spice typically appears as a packaged dried plant product or leaves, and is sold at gas stations, liquor stores, convenience stores, smoke shops and other outlets. While

spice sometimes has a label warning against human consumption, that is its intended use. Businesses that sell spice openly solicit the product by claiming that, when smoked, spice causes a marijuana-like high. Spice is a green leafy product sprayed with synthetic substances that mimic the effects of marijuana when smoked. Spice is marketed under numerous brand names.

B. The use of substituted cathinones, commonly called "bath salts," has significantly increased throughout the United States, and the United States Drug Enforcement Administration (DEA) used its emergency scheduling authority to temporarily control Mephedrone, Methylenedioxypyrovalerone (MDPV), Methylone, and other chemical compounds found in "bath salts," finding that ingestion of these substances can cause serious injury and death.

C. Spice and bath salts are synthetic intoxicants that endanger the health and safety of the public. While distribution of these products is a violation of both State law and City ordinance, the available penalties do not appear to adequately deter vendors because the profitability from the sale of these products may outweigh the risks associated with prosecution. Manufacturers and vendors of synthetic intoxicants change the names, labeling, or chemical composition of the products to avoid prosecution. Businesses that distribute synthetic intoxicants create a public nuisance in the City as defined by State law and City ordinances.
(Ord. No. 1057, 12-3-2012)

5.50.030 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Bath salts" means the substances defined by NMSA 1978, § 30-31-6(C)(20)—(25), the addition of substances by State regulation, including, but not limited to, 16.19.20 NMAC, Section 65 as amended from time to time, and the substances defined as a synthetic stimulant pursuant to Hobbs Municipal Code 9.28.010 A.

"Business" means the premises, whether it be a main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting business. The term "business" includes the sales persons on site.

"Business day" means regular business hours Monday through Sunday. The day the business receives a cease and desist order and notice of violation does not

count as a business day. If the business has irregular hours or the hours are not posted, a business day shall be the next twenty-four (24)-hour time period after receipt of a cease and desist order and notice of violation.

"Business operator" means the person or persons on site at the business in actual or apparent control of the business during business hours.

"Business registration" means the privilege to register to do business and the registration of a business under Chapter 5.04 of the Hobbs Municipal Code.

"Cease and desist order and notice of violation" means documentation delivered to the business operator ordering the business closed for inspection and testing.

"Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

"Police officer" means a sworn member of the Hobbs Police Department, the Lea County Sheriff's Office, or the New Mexico State Police.

"Sales person" means any agent or independent contractor of the business employed or engaged to transact business with the public on the premises.

"Spice" means a synthetic cannabinoid as defined by NMSA 1978, § 30-31-6 (2011), substances added to the definition of a synthetic cannabinoid by State regulation, including, but not limited to, 16.19.20 NMAC, Section 65 as amended from time to time, and the substances defined as a synthetic cannabinoid pursuant to Hobbs Municipal Code 9.28.010 A.

"Synthetic intoxicant" means bath salts or spice.

"Transfer of ownership or control of a business" means:

1. The sale, lease, or sublease of the business;

2. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 1057, 12-3-2012)

5.50.040 Violation.

It is a violation of the Synthetic Intoxicant Ordinance for a business to manufacture, stock, sell, distribute, dispense, possess, purchase, advertise for sale, publicly display for sale, give, trade, offer to sell, order, or offer to order a synthetic intoxicant. (Ord. No. 1057, 12-3-2012)

5.50.050 Enforcement.

A. If a police officer has probable cause to believe a violation has occurred, the police officer shall obtain a sample of the substance believed to be a synthetic intoxicant. The sample shall be tested by methods commonly utilized by law enforcement labs or private labs to determine whether a substance is a synthetic intoxicant. If the test determines that the substance is a synthetic intoxicant, the police officer, upon approval of the City of Hobbs Legal Department, shall issue and deliver a cease and desist order and notice of violation upon the business operator and seize the entire inventory of the synthetic intoxicant from the business. The cease and desist order and notice of violation shall be filed with the City Clerk. When the cease and desist order and notice of violation is delivered to the business, if the police officer has probable cause to believe that the synthetic intoxicant has been relabeled, repackaged or incorporated into other substances, those substances shall also be seized and tested. If the test is negative as to the relabeled, repackaged or incorporated substances, the inventory shall be returned to the business. The transfer of ownership or control of the business does not avoid the seizure authorized by this paragraph.

B. Upon receipt of the cease and desist order and notice of violation by the business operator, the business shall immediately allow and not interfere with the seizure of the inventory which is a synthetic intoxicant or is reasonably believed to be a synthetic intoxicant that has been relabeled, repackaged or incorporated into other substances. The business shall also close and cease transacting business for seven (7) business days after the cease and desist order and notice of violation is assessed. During the seven (7)-day closure, a police officer, in cooperation with other agencies if required, shall inspect the premises, find and seize any remaining synthetic intoxicants or precursor chemicals or materials on site. The transfer of ownership or control of the business does not avoid the process authorized by this subsection. No inventory, merchandise, personal property, chattel property or other property shall be received by or taken off the business premises during closure unless authorized by a police officer. Upon expiration of the mandatory seven (7)-day closure, the business shall not be allowed to transact business until the

business owner has reimbursed the City for the costs of testing all samples taken from that business which were determined through laboratory testing to be synthetic intoxicants.

C. If a business is assessed a second cease and desist order and notice of violation within five (5) years of a first cease and desist order and notice of violation, the business shall cease conducting business in the City and will be barred from business registration for a period of one year from the date the second cease and desist order and notice of violation is assessed. The business owner shall also be required to reimburse the City for the costs of testing all samples taken from that business which were determined through laboratory testing to be synthetic intoxicants. The transfer of ownership or control of the business does not avoid the operation of this section.

D. The City of Hobbs shall have the authority to seek an injunction to compel compliance with the Synthetic Intoxicant Ordinance on grounds that the business is causing irreparable harm to the community by distributing synthetic intoxicants.

E. Any action taken by the City of Hobbs against any person or business pursuant to the Synthetic Intoxicant Ordinance shall not prevent the City from also pursuing criminal charges against that person or business for any violation of Chapter 9.28 of the Hobbs Municipal Code.
(Ord. No. 1057, 12-3-2012)

5.50.060 Appeal.

A. Upon delivery of a cease and desist order and notice of violation, the business has ten (10) days from the day the cease and desist order and notice of violation was delivered to appeal to the Lea County District Court.

B. A copy of the appeal must also be submitted to the City Clerk within ten (10) days from the day the cease and desist order and notice of violation was delivered.

C. The filing of an appeal will not postpone or delay any actions taken by the City against the business pursuant to Section 5.50.050 of this chapter.

D. The failure of a business to file an appeal with the Lea County District Court within ten (10) days from the day the cease and desist order and notice of violation was delivered constitutes a waiver of the business's right to appeal and will be considered an implied agreement by the business as to all actions taken by the City of Hobbs pursuant to this chapter.
(Ord. No. 1057, 12-3-2012)

Title 6

ANIMALS*

Chapter 6.04 Hobbs Animal Ordinance

6.04.010 Short title.
6.04.020 Definitions.
6.04.030 Rules and regulations.
6.04.040 Procedures for complaints.
6.04.050 Procedure for City Manager and Animal Protection Officers.
6.04.060 Waiver.
6.04.070 Fees, permits and licenses.
6.04.080 City animal protection facilities.
6.04.090 Impounding animals.
6.04.100 Seizure and disposition of animals.
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6.04.120 General provisions.
6.04.130 Shelter-Refuge-Professional animal permit and hobby breeder permit.
6.04.140 Pet store.
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6.04.170 Reduced cost spay and neuter program.
6.04.180 Discount spay or neuter certificates.
6.04.190 Adoption of dogs and cats.
6.04.200 Animals biting persons.
6.04.210 Animal license.
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6.04.230 Multiple animal site permit.
6.04.240 Restraint of dogs.
6.04.250 Vaccinations.
6.04.260 Abandonment.
6.04.270 Admission of qualified assistance animals to public places.
6.04.280 Animals disturbing the peace.
6.04.290 Animals killing or injuring livestock or protected wildlife.

***Editor's note—**Ord. No. 1024, adopted Nov. 2, 2009, repealed the former Title 6, Ch. 6.04., §§ 6.04.010—6.04.090 and enacted a new Title 6 as set out herein. The former Title 6 pertained to animals and derived from Prior code §§ 6-1—6-8; Ord. 826 § 3 (part), 1995; Ord. 903, 2003; Ord. 909 (part), 2003; Ord. 933 (part), 2005; Ord. 1018, Amd. 2, 9-21-2009. For a complete derivation see the Ordinance Disposition list and Code Comparative Table at the end of this volume.

6.04.300 Dogs or livestock on unenclosed properties.
6.04.310 Animal poisoning.
6.04.320 Dogs or livestock running at large.
6.04.330 Injury to animals by motorists.
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6.04.360 Breaking into animal protection facilities or vehicles.
6.04.370 Care and maintenance.
6.04.380 Confinement of female dogs or cats in mating season.
6.04.390 Concealment of animal.
6.04.400 Fights.
6.04.410 Fowl; impounding or crating.
6.04.420 Interference with the Animal Protection Officer in the performance of his duties.
6.04.430 Keeping a seriously sick or injured animal.
6.04.440 Keeping domesticated livestock and fowl.
6.04.450 Sale and display of animals.
6.04.460 Sterilization agreements/contracts.
6.04.470 Unlawful use of rabies tag.
6.04.480 Improper disposal of animals.
6.04.490 Vicious or dangerous animals.

Chapter 6.05 Dangerous Dog

6.05.010 Short title.
6.05.020 Definitions.
6.05.030 Exceptions.
6.05.040 Seizure of dog; petition to court.
6.05.050 Registration and handling requirements for dangerous and potentially dangerous dogs.
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Chapter 6.06 Wild Animals; Canine Hybrids; Vietnamese Potbellied Pigs

Sec. 6.06.010 Wild animals.
Sec. 6.06.020 Canine hybrids.
6.06.030 Vietnamese Potbellied Pigs or potbellied pigs.

Chapter 6.08 Special Use Permit for Horse Racetracks and Appurtenant Uses

6.08.010 Requirements.

Chapter 6.09 Penalties

6.09.010 Penalty.
6.09.020 Suspensions, revocations of permits.
6.09.030 Appeal procedures for permit denial, suspension or revocation.
6.09.040 Severability clause.

Chapter 6.04 HOBBS ANIMAL ORDINANCE

6.04.010 Short title.

This chapter shall be known and may be cited as the "Hobbs Animal Ordinance".

It is the intent of the City Commission that enactment of this chapter will protect animals from neglect and abuse, will protect residents from annoyance and injury, will encourage responsible ownership of animals as pets, will assist in providing housing for animals in an adoption center and will partially finance the Animal Protection Department's functions of adopting, housing, licensing, enforcement and recovery. It is the intent of the City Commission to organize and utilize advisory groups to assist with improving public awareness about subjects pertaining to the enactment of this chapter.
(Ord. No. 1024, 11-2-2009)

6.04.020 Definitions.

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

"Abandon" means to leave an animal for more than twenty-four (24) hours without making effective provisions for its proper feeding and care.

"Animal" means any vertebrate member of the animal kingdom except humans.

"Animal Protection" means the staff, facility, programs, kennels, lot, premises, and buildings maintained by the City for the implementation of the protection and care of animals.

"Animal Protection Officer" means a City of Hobbs Animal Protection officer or supervisor.

"Animal Fighting Paraphernalia" means equipment that any reasonable person would ascertain is used for animal fighting purposes which includes, but is not limited to:

1. Instruments designed to be attached to the leg of a bird, such as (a) boxing gloves, knife, gaff, or other sharp instrument;
2. Items to train and condition animals to fight including, but not limited to, hides or other material used as hanging devices to strengthen and/or condition dogs, wooden sticks or handles used to pry open dog's jaws, performance enhancing drugs or substances, or food or water additives; and

3. The presence of any animal that appears to be a fighting animal alone or together with animals suspected of being used as bait animals including but not limited to rabbits, cats, and other dogs.

"Bait animal" is an animal used to train and/or condition other animals to fight and includes but is not limited to dogs, cats, and rabbits exposed to attack by other animals used or trained to be used in fighting or to make the attacking animal more confident and aggressive.

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

"Bona Fide Animal Show" includes events sanctioned by organizations such as the American Kennel Club (AKC) or North American Dog Agility Council (NADAC), generally organized by local clubs, and including conformation events or performance events such as obedience, agility, and tracking.

"Breeding" means permitting, either intentionally or unintentionally, a female dog or cat to produce offspring.

"Canine hybrid" means:

1. Any canine which has or had a pure wolf or pure coyote as a parent or grandparent; or

2. An animal represented by its owner to an Animal Protection Officer, law enforcement officer, or to a veterinarian to be the offspring, cross, mix, or hybrid of a wolf or coyote within the preceding two (2) generations; or

3. Any animal which, because of its pure wolf or pure coyote ancestry, cannot be vaccinated against rabies.

"City" means the area within the jurisdictional boundaries of the City of Hobbs, including privately owned land, excluding the area within the jurisdiction of the United States Government or the State of New Mexico.

"City Manager" means the City Manager of the City of Hobbs or his designated representative(s).

"Commission" means the Mayor and City Commissioners.

"Confinement" means detainment or isolation of an animal.

"Dangerous animal" means any of the following:

1. An animal which, when unprovoked, engages in behavior that requires a defensive action by a person to prevent bodily injury to a person or another animal which is off the property of the owner of the animal in question.

2. An animal which, when unprovoked, injures a person in a manner which does not result in muscle tears or disfiguring lacerations, or require extensive corrective or cosmetic surgery.

3. An animal which, because of its poisonous sting or bite, would constitute a significant hazard to the public.

"Designee or designated representative" means the Animal Protection Supervisor or other appropriate staff.

"Enclosed" means a parcel of land completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain animals within, or by an electric or invisible fencing that has been approved by the City Manager.

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

"Fowl" means turkeys, geese, ducks, guineas, chickens and all other domesticated fowl.

"Grooming parlor" means an establishment or part thereof maintained for the purposes of performing cosmetological services for animals.

"Guard dog" means a dog that is used to protect a commercial property, but excludes a dog used exclusively to guard livestock.

"Hobby breeder site" means a non-commercial animal facility or premises operated by a person involved in voluntary or involuntary breeding of dogs or cats and the resultant offspring are not sold for resale to commercial outlets or for the purpose of research, testing, or laboratory experimentation.

"Household" means the collection of individuals, related or not, who reside at one (1) street address.

"Kennel" means a commercial establishment operating for intended profit where dogs or cats are boarded, kept, or maintained.

"Kennel area" is a secure space within which an animal is housed that is of sufficient height and strength to contain the animal within and provide sufficient room for the animal to comfortably move around within the structure. This includes all area available to the animal during a twenty-four-hour period.

"Licensed veterinarian" means an individual with a doctor of veterinary medicine degree who is licensed to practice in the state.

"Livestock" means horses, cattle, pigs, sheep, goats, rabbits, fowl, or any other domestic animals typically used in the production of food, fiber, or other products or activities defined by the City Manager as agricultural.

"Lot" means a parcel or plot of ground with common ownership. To be one (1) lot all the ground contained within said plot or parcel must be contiguous.

"Multiple animal site permit" means permit issued to an individual/household who does not qualify as a shelter, refuge, professional animal establishment, or hobby breeder but who wishes to keep dogs or cats in excess of the maximum allowed under this title.

"Owner" means a person eighteen (18) years of age or older or the parent or guardian of a person under eighteen (18) years of age who owns, harbors, keeps an animal, has one (1) in his care, or permits an animal to remain on or about the premises owned or controlled by him.

"Person" means an individual, household, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

"Permitted premises" means the establishment, household, property or site for which a valid permit has been issued by the City for use as a kennel, grooming parlor, pet shop, refuge, shelter, hobby breeder site or multiple animal site.

"Pet shop" means any premises, or part thereof, open to the public which engages in the purchase, sale, exchange or hire of animals of any type, except the term shall not apply to premises used exclusively for the sale of livestock.

"Premises" means a parcel of land and the structures thereon.

"Professional animal establishment" means any kennel, grooming parlor, or pet shop, with the exception of state inspected veterinary hospitals and federally inspected laboratory facilities and zoos.

"Qualified assistance animal" means:

1. A dog trained or being trained by a recognized school for training dogs to assist persons with disabilities.
2. An animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990.
3. Any other animal approved by the governor's committee on concerns of the handicapped as acceptable in public places and trained to provide some special assistance to a person with a disability.

"Quarantine" means detention or isolation of an animal in order to observe for rabies or other communicable diseases.

"Refuge" means an establishment owned or operated by a non-profit organization whose sole function is to aid and comfort more than four (4) animals, and where animals are not bred.

"Rescue animal" means animals that are rescued by a bona fide humane society or other recognized rescue organization or by an individual who received prior written recognition by the City Manager to rescue and temporarily care for animals in order to place them into permanent homes.

"Residential neighborhood" means an area where at least ninety (90) percent of the lots in the block containing the subject lot and the block facing the subject lot are single or multi-family residences or vacant.

"Shelter" means a non-profit animal facility operated by an individual or group or member of a recognized animal humane association for the purpose of bringing aid and comfort to dogs or cats, and where animals are not bred.

"Show animal" means a dog or cat, which is registered with a recognized registry organization, or is a member of a breed which is not eligible to be registered if that breed has been approved by the City Manager and which is involved in bona fide animal shows.

"Sterilized" means to be rendered permanently incapable of reproduction.

"Stray" means a dog, canine hybrid or livestock found running at large.

"Supervisor" means the Supervisor of the Animal Protection Department of the City of Hobbs.

"To run or running at large" means any dog, canine hybrid or livestock free from physical restraint beyond the boundaries of the owner's premises.

"Trap, neuter and return (TNR)" is the practice of humanely trapping un-owned cats, having them evaluated, vaccinated, sterilized and ear-tipped by a veterinarian and returning them to the location where they were trapped.

"Trolley" means a cable strung between two (2) fixed and stable points, to which a dog on a tether is attached, allowing for freedom of movement.

"Vaccination" means protection provided against rabies by inoculation with a vaccine as required by NMSA 1978 § 77-1-3 (1979).

"Vicious animal" means an animal which kills or seriously injures a person or domesticated animal; resulting in muscle tears or disfiguring lacerations, requiring multiple sutures or extensive corrective or cosmetic surgery. Vicious animal does not include an animal which bites, attacks or injures a person or animal that is unlawfully upon its owner's premises. The provocation of an animal by a person is an affirmative defense to a charge of keeping or harboring a vicious animal.

"Weatherproof enclosure" means an enclosure designed to protect the animal against disagreeable or harmful atmospheric conditions, i.e. storm, rain, snow, etc. (Ord. No. 1024, 11-2-2009)

6.04.030 Rules and regulations.

Reasonable rules and regulations may be prescribed by the City Manager to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. The City Manager may delegate his powers to the Supervisor as he may deem expedient. The Supervisor may delegate such powers to the duly appointed Animal Protection Officers as he may deem expedient. An Animal Protection Officers shall wear a uniform and shall carry appropriate identification. Identification is to be surrendered to the City upon cessation of employment.
(Ord. No. 1024, 11-2-2009)

6.04.040 Procedures for complaints.

A. A complaint alleging any violation of this chapter may be filed with the City by a person who has personal knowledge of such violation and who can identify the owner of the animal involved or the premises where the animal is located. The City Manager may require the complainant to provide his name and address and swear to and affirm the complaint.

B. It is unlawful for any person to intentionally make a report to the City Manager, which that person knows to be false at the time of making it, alleging a violation by another person of any violation of the Hobbs Animal Ordinance.
(Ord. No. 1024, 11-2-2009)

6.04.050 Procedure for City Manager and Animal Protection Officers.

A. The City Manager, Supervisor and Animal Protection Officers shall have the authority, and are directed to investigate upon probable cause, any alleged violation of this chapter or of any law of the State of New Mexico relating to the care, treatment, control and prevention of cruelty to animals.

B. Animal Protection Officers are authorized to inspect premises as necessary to perform their duties. If the owner or occupant of the premises objects to inspection, a warrant shall be obtained from a court of competent jurisdiction prior to inspection. No warrant shall be necessary if probable cause exists to believe that there is an emergency requiring such inspection or investigation.

C. Whenever the City Manager has probable cause to believe that a person has violated this chapter, the City Manager may prepare a criminal complaint to be filed with the appropriate court or prepare a citation for the alleged violator to appear in court. The citation shall contain the name, address and telephone number, if known, of the person violating this chapter, the driver's license number of such violator, if known, the code section allegedly violated, and the date and place when and where such person allegedly committed the violation, and the location where such person shall appear in court and the deadline for appearance. The City Manager shall present the citation to the person he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign a copy of the citation. The City Manager shall deliver a copy of the citation to the person promising to appear.

D. If the alleged violator refuses to give his written promise to appear, the City Manager shall file a criminal complaint with the City of Hobbs Municipal Court.

E. Neither the City Manager nor the Supervisor nor the Animal Protection Officers shall have the authority to dismiss a citation.
(Ord. No. 1024, 11-2-2009)

6.04.060 Waiver.

A. The City Manager shall have the authority to grant waivers.

B. Any person seeking a waiver pursuant to this title shall file a written application with the City Manager. The written application shall contain information which describes the ordinance section for which a waiver is requested and the reason for the waiver.

C. Any person seeking a waiver shall indicate in his application to the City Manager the specific reason why he should not be required to meet the established ordinance criteria. The applicant shall also include a written statement that he has personally contacted all residents and owners of properties within four hundred (400) feet of the property in question and none oppose the waiver being requested.

D. In determining whether to grant or deny the application, the City Manager shall balance the hardship to the applicant, the community and other persons of not granting the waiver against the potential adverse impact on the animals and residents affected.

E. Waivers shall be granted by notice to the applicant and all residents and owners of properties within four hundred (400) feet and may include all necessary conditions, including time limits, on the permitted activity. The waiver shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the waiver shall terminate it and subject the person holding it to those provisions of this title.
(Ord. No. 1024, 11-2-2009)

6.04.070 Fees, permits and licenses.

A. Fees for licenses, services and permits required pursuant to this chapter shall be established through resolution adopted by the Commission.

B. A permit is not a property right.

C. The City Manager can refuse to issue, revoke, suspend or modify permits and impose conditions or limits upon the issuance of permits, including the declaration of moratoria regarding issuance of permits.

D. Permits expire on December 31st of each year, unless otherwise specifically provided in this title.

E. Permit fees paid after July 1st in initial year of purchase will be prorated by the month. Permit renewals shall not be prorated.

F. A late fee of fifty dollars ($50.00) or fifty (50) percent of the permit fee, whichever is less, shall be charged for all permit renewals after January 31st of each year.

G. Permits are not refundable or transferable except as provided for in this title. (Ord. No. 1024, 11-2-2009)

6.04.080 City animal protection facilities.

A. There are established one (1) or more City animal protection facilities which shall be located in such numbers and at such sites as shall be designated by the Commission.

B. The animal protection facilities shall be operated to provide service to the general public during the hours set by the City Manager.
(Ord. No. 1024, 11-2-2009)

6.04.090 Impounding animals.

A. An Animal Protection Officer may take up and impound in any designated animal protection facility stray animals or livestock or any animal or livestock kept or maintained contrary to the requirements of this code.

B. The animal shall be confined in accordance with the City's regulations.

C. The owner shall be responsible for all impound fees, boarding fees and other costs whether or not the animal is reclaimed.

D. Reclaim of animal and payment of fees or presentment of valid permit does not waive prosecution for violations under this chapter.

E. The owner shall be required to pay a reclaim fee to reclaim any unsterilized dog or cat.

1. An unsterilized dog or cat reclaimed by its owner shall be released without assessment of reclaim fee upon presentment of a valid hobby breeder permit plus payment of impound fees, boarding fees and other costs imposed by the City.

2. Reclaim fee shall be reduced by fifty (50) percent, but shall not be less than one hundred dollars ($100.00) for first time reclaim of an animal. This reduced fee is per household per calendar year.

3. Reclaim fee will be waived for the second reclaim of a specific dog or cat within one (1) calendar year. Full reclaim fee will be charged for third and subsequent reclaim.
4. Reclaim fee will be refunded to the owner of any dog or cat that is sterilized within thirty (30) days after release. To obtain a refund the owner must provide a written certificate from a licensed veterinarian stating the animal has been neutered or spayed containing sufficient description to match reclaimed animal.
5. Owner may pay sterilization fee in lieu of reclaim fee to have dog or cat spay or neutered by City prior to release.
6. Canine hybrid will not be released unsterilized.
7. Owner must provide proof that they possess a current City license (or proof of non-residency) and rabies vaccination for the animal.

F. A sterilized dog with current rabies vaccination, current City license, and a microchip may be reclaimed without owner being cited for running at large once each calendar year. Owner shall be responsible for impound and boarding fees.

G. Any animal which is not reclaimed becomes the property of the City and may be placed for adoption or humanely destroyed in accordance with City's policy and procedures.

H. The Animal Protection Department may require inspection of enclosures for livestock prior to reclaim.

I. The City Manager is hereby authorized to place for adoption unclaimed livestock that has been impounded by the City and to execute adoption papers to the purchaser at the end of a ten-day waiting period.

1. Adoption of large livestock may be done after submitting a sealed bid to the Animal Protection Department.
2. Adoption of small livestock may be done after paying an adoption fee to the Animal Protection Department.

J. The Supervisor shall maintain, for a reasonable period of time or as required by law, a record of all animals impounded. At least the following information shall be included:

1. Complete description and picture of the animal;
2. Manner and date of its acquisition;

3. Date, manner, and place of impoundment;

4. Impoundment number;

5. Date, manner, and description of final disposition

K. Owner relinquishing an animal shall be required to complete an owner's release at the time of impoundment.

L. An Animal Protection Officer may take possession of a stray animal not wearing a current rabies tag, if required, who is deemed critically injured or critically ill for euthanizing. A report must be filed with the City Manager.

M. Whenever the City Manager finds that any animal is or will be without adequate care because of injury, illness, incarceration or other absence of the owner or person responsible for the care of such animal, the City Manager may take up such animal for protective care. The owner of the animal may reclaim the animal after paying all required fees and costs imposed by the City. If the animal is unclaimed at the end of the protective custody period, the animal will become the property of the City and may be placed for adoption, be humanely destroyed or otherwise disposed of by the City.
(Ord. No. 1024, 11-2-2009)

State law reference—Sterilization agreement and sterilization deposit required, NMSA 1978, § 77-1-20 (1993).

6.04.100 Seizure and disposition of animals.

A. A Peace Officer or Animal Protection Officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court, or the municipal court for a warrant to search for and seize an animal or animals.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty (30) days unless good cause is demonstrated by the City.

C. The officer seizing animals under the warrant shall give a copy of the affidavit for the search warrant, the search warrant, and a copy of the inventory of the animal or animals seized to the person from whose possession or premises the animals were taken.

D. If the owner of the animal cannot be located or cannot be determined, a copy of the affidavit for the search warrant, the search warrant, and the inventory of the animals seized shall be conspicuously posted at the place where the animals were seized at the time the seizure occurs.

E. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

F. At the option and expense of the owner, the seized animals may be examined by a licensed veterinarian of the owner's choice.

G. If the court finds that the seized animal is not being cruelly treated, and the animal's owner is able to adequately provide for the animal in a manner consistent with this title, the court shall return the animal to its owner.

H. If the court finds that the seized animal is being cruelly treated or that the animal's owner is unable to adequately provide for the animal in a manner consistent with this title; the court shall hold a hearing to determine the disposition of the animal.

I. Upon conviction, the court may place the animal for adoption with the City Animal Adoption Center program or provide for humane destruction of the animal.

J. Upon conviction, the defendant shall be liable for the cost of boarding the animal and all necessary veterinary examinations and care provided to the animal.

K. Any person with a conviction for cruelty to animals cannot own, possess, harbor, keep or have custody of any animal or allow, cause, or permit any animal to be harbored or kept on his property within the City limits. Animal Protection Officers shall immediately remove any animal found to be harbored or kept for any reason upon said person's property. A seized animal will be handled pursuant to Section 6.04.090 of this chapter, titled Impounding Animals.

L. In the absence of a conviction, the City shall bear the cost of boarding the animal and all necessary veterinary examinations and care during the pendency of the proceedings.

M. Cruelty to Animals.

1. It is unlawful for a person to recklessly, willfully or maliciously kill, maim, disfigure or torture; beat with a stick, chain, club or other object; mutilate,

burn or scald with any substance, overwork, torment, harass or otherwise cruelly set upon any animal, except that reasonable force may be used to drive off vicious, dangerous or trespassing animals.

2. It is unlawful for a person to fail to provide necessary sustenance, fail to provide necessary basic or emergency medical care, maintain an animal in an enclosed environment without adequate provisions to prevent pain or suffering, and perform procedures such as ear-cropping, de-barking, tail docking on an animal, or otherwise endanger an animal's well-being. Procedures completed by a licensed veterinarian in accordance to their standard practices shall not be considered cruelty.

(Ord. No. 1024, 11-2-2009)

State law reference—Seizure of Animals, NMSA 1978, § 30-18-1.1 (1999).

6.04.110 Retention of strays or owner-surrendered animals.

A. No person shall, without the knowledge and consent of the owner, hold or retain possession of any animal for more than twenty-four hours without first reporting the possession of the animal to the Animal Protection Department.

1. The report shall contain the person's name and address, a true and complete statement of the circumstances under which he took up the animal, and the precise location where the animal is confined.

2. No person having such an animal in his possession shall refuse to immediately surrender the animal to an Animal Protection Officer upon demand.

B. Duly incorporated humane societies or the rescue arms of accredited dog and cat clubs or horse organizations capable of providing proper confinement, shelter, and care for stray, lost or owner-surrendered animals shall be allowed to assume the care of such animals.

1. The owner of a stray animal wearing a rabies tag or other form of identification shall be notified that the animal has been impounded.

2. If the owner is not located within three (3) working days the society may assume responsibility for finding the animal a new home.

(Ord. No. 1024, 11-2-2009)

6.04.120 General provisions.

A. No person shall operate a hobby breeder site, shelter, refuge or professional animal establishment, without a valid permit. A person may obtain an annual permit under the following conditions:

a. Payment of an annual permit fee at the office of the Animal Protection Department. Failure to renew the permit within thirty (30) days of the expiration date shall result in the assessment of a penalty fee in addition to the cost of the permit.

b. The permit application shall contain the following information at a minimum:

   1. Name of applicant/organization;
   2. Address of applicant/organization;
   3. Telephone number of applicant/organization;
   4. Federal Tax Identification Number (not applicable to hobby breeder);
   5. The location where the animals will be kept;
   6. Maximum number of animals expected to be kept on site;
   7. Plot plan of location showing placement and sizing of kennel area and runs;
   8. The City Manager may require such other information as is deemed necessary in order to determine whether to approve or deny a permit under this article.

c. Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection on an annual basis or upon reasonable notice. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.

d. Kennel area facilities shall be structurally sound and constructed of nontoxic materials. Interior floors shall be smooth, easily cleanable construction and impervious to water. The premises shall be kept clean, sanitary and in good repair in a manner which will protect animals from disease and injury.

e. Animals maintained in pens, cages or runs for periods exceeding twenty-four (24) hours shall be provided with adequate space to prevent overcrowding and to maintain normal exercise according to species. Such cages holding cats must contain a litter box.

f. Permit shall be posted in a conspicuous place on the premises.

g. Permits are not transferable.

h. Adequate weatherproof housing shall be provided in all permitted premises with proper ventilation and temperature, and sufficient lighting and shade.

i. Outside housing shall protect animals from weather that may be detrimental to the health of the animals.

j. Restraint of animals shall be accomplished by adequate pens, cages, runs or fencing maintained at all times to contain the animals.

k. Provisions shall be made for the removal and proper disposal of animal and food waste, soiled bedding, dead animals and debris. Animals shall be removed from cages and protected from water and cleaning agents during cleaning. Disposal facilities shall be operated in a manner which will minimize vermin infestation, odors and disease. Adequate drainage shall be maintained.

l. Excessive and night-time noise shall be eliminated.

m. Unsterilized adult animals shall be segregated by sex when in mating season, except where otherwise indicated for health, welfare or breeding purposes. Animals shall be housed in compatible groups.

n. Vicious, diseased or injured animals and animals that have bitten a person shall be individually caged.

o. Animals shall be provided with clean, fresh, sufficient and wholesome food and water. Food and water containers shall be kept clean.

p. Sanitary, pest-free storage of food and bedding shall be provided.

q. Each animal shall be observed daily by the person in charge. Programs for disease control and prevention shall be maintained and available for examination by an Animal Protection Officer. Sick, diseased, injured, lame or blind animals shall be provided with appropriate veterinary care. Humane euthanasia will be provided when necessary in accordance with New Mexico Administrative Code, Title 16, Chapter 24, Parts 1 through 5. The person in charge who suspects an animal of being rabid shall immediately notify the City Manager and segregate the animal.

r. Every dog or cat offered for sale, adoption, barter, to be given away or any other transfer or conveyance shall have been given age appropriate vacci-

nations by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the recipient at the time of transfer.

(Ord. No. 1024, 11-2-2009)

6.04.130 Shelter-Refuge-Professional animal permit and hobby breeder permit.

A. The number of adult dogs or cats, or any combination thereof, which a hobby breeder site, may keep is established by the following factors:

1. The area of the permitted hobby breeder site shall be limited to ten (10) percent of the total area of the premises.
2. Within the kennel area of a hobby breeder site, seventy-five (75) square feet of area shall be provided for each dog weighing less than thirty (30) pounds; one hundred (100) square feet for each dog weighing between thirty (30) and fifty-nine (59) pounds, one hundred twenty-five (125) square feet per dog over sixty (60) pounds, and twenty-five (25) square feet of space per cat excluding the area occupied by the litter box.
3. In the kennel area the animal must be able to stand and walk freely and have room for shelter (for outdoor facilities), food, water, and litter boxes for cats.

B. The number of adult dogs or cats, or any combination thereof, which a shelter, refuge, professional animal site may keep is established by the following factors:

1. The kennel area must provide at least seventy-five (75) square feet of area for each dog weighing less than thirty (30) pounds; one hundred (100) square feet for each dog weighing between thirty (30) and fifty-nine (59) pounds, one hundred twenty-five (125) square feet per dog over sixty (60) pounds, and twenty-five (25) square feet of space per cat excluding the area occupied by the litter box.
2. In the kennel area the animal must be able to stand and walk freely and have room for shelter (for outdoor facilities), food, water, and litter boxes for cats.
3. A record shall be kept of animal inventory, disposition, and inoculations and shall be available for examination by an Animal Protection Officer.

C. Hobby breeders must continue to care for or otherwise provide for adoption, rescue or some other type of sanctuary for animals no longer being used for breeding. Site records must reflect compliance with this provision.

(Ord. No. 1024, 11-2-2009)

6.04.140 Pet store.

A. Pet stores shall not sell dogs, canine hybrids or cats but may sell other living creatures including, but not limited to, fish, birds, rodents, insects, arachnids, reptiles and other permissible exotic animals.

B. No pet store shall conduct business in the City without a shelter-refuge-professional animal site permit.

C. Applicant for a permit must have a valid New Mexico Tax ID number and a City business registration.

D. Animals must be kept and maintained in a humane manner with adequate food, water and shelter. Animals must be housed and displayed in such a way to provide adequate enclosure space based on the size and habitat requirements of the animal.

E. No permit holder may sell or offer for sale any animal from a mobile facility or at a site away from the permitted site without obtaining a mobile business registration from the City Clerk.

F. A permit holder shall be liable for the medical costs including medicine, up to the amount received for the sale of the animal, for any animal that is diagnosed as sick by a veterinarian qualified for the species within one (1) week from the date of sale.

1. Permit holder shall reimburse purchaser the costs associated with the sick animal.
2. Purchaser shall be allowed to keep the animal.
3. Permit holder or purchaser may appeal to the City Manager if there is a dispute regarding the fact or the illness or the amount of the charges.

G. Permit holder shall keep thorough and accurate records for each animal sold. Records shall be kept for three (3) years. Records shall be made available for inspection upon demand by the City Manager. Records shall include, but are not limited to:

1. Date of sale.
2. Purchaser's name, address and telephone number.
3. Description and picture of animal.
4. Origin of animal.

H. Animals with known or suspected communicable diseases shall be isolated, as appropriate, and treated as soon as possible.

I. The daily use of antibiotics for preventative purposes, and not to treat a specific illness or condition, is prohibited whether administered in food, water or by any other method.
(Ord. No. 1024, 11-2-2009)

6.04.150 Guard dog site.

A. A guard dog may be used at commercial property only.

B. No person shall use a guard dog without having a New Mexico Tax ID number and a Hobbs Business Registration.

C. Owner of unsterilized guard dog must have a hobby breeder permit.

D. A guard dog shall not be used for property in a residential neighborhood or within two hundred fifty (250) feet of a school.

E. The area where the guard dog is to be used shall be secured in such a manner as to prevent its escape.

1. The outside area where the guard dog is on duty must be enclosed by a secure fence at least six (6) feet in height with a forty-five-degree angled top which extends back into the enclosure. Such extension shall not be included in the measurement of the fence height and shall not be made of barbed wire or other similar material which would harm the dog. Enclosure shall be designed [to] effectively contain the animal at all times.

2. The doors, windows, and all other openings to the outside of a building in which a guard dog is on duty shall be secured to prevent its escape.

F. The property using a guard dog shall be posted with warning signs at least 24 × 12 inches with three-inch letters.

1. The warning signs shall state "guard dog" and "guardia" and shall show a picture of an aggressive dog.

2. The warning signs shall be posted not more than fifty (50) feet apart on the exterior of the fences or walls surrounding the property and shall be posted at all exterior corners of the site and at every entrance to the site.

G. The escape of a guard dog from a guard dog site is a violation of this section and can constitute a basis for seizure of the dog.

H. A guard dog shall have a current rabies tag and a valid license tag securely affixed to its collar or harness.

I. If the City Manager determines it is necessary to control noise at the guard dog site, the City Manager may require the owner of the site or owner of the guard dog to construct a barrier which breaks the guard dog's line of site to the exterior and adequately buffers the noise.

J. Vehicles used to transport guard dogs shall be secured so the public is protected from injury, shall be constructed or modified to ensure that the guard dog is transported in a safe and humane manner that does not violate this title, and shall be posted with warning signs on each side of the vehicle.

K. No breeding of animals is allowed at a guard dog site.
(Ord. No. 1024, 11-2-2009)

6.04.160 Litter permit.

A. An owner who intentionally or unintentionally breeds a dog or cat and who does not have a current shelter-refuge-professional animal permit or hobby breeder permit shall purchase a litter permit for each litter. A female dog or cat shall have no more than one (1) litter and each household shall be limited to no more than four (4) litters in any calendar year. A litter permit will not be issued and owner will be in violation of this section, if found to have had a female dog or cat with more than one (1) litter or more than four (4) litters in the household in a calendar year.

B. The litter permit application shall contain the following information at a minimum:

1. Name of applicant.
2. Address of applicant.
3. Telephone number of applicant.
4. Description and picture of female animal.
5. The City Manager may require such other information as is deemed necessary in order to determine whether to approve or deny a license under this article.

C. Litter permit is good for six (6) months from date of issue and must be obtained no later than one (1) week after the birth of the litter.

D. The owner shall not advertise, barter for, sell, or give away any puppy or kitten unless the applicable permit number is displayed legibly in all advertisements. The owner shall furnish the litter permit number to any potential recipient upon request. Failure to list permit number or advertising without prior purchase of permit is a violation of this section.

E. Puppies and kittens can only be bartered for, sold, given away or other transfer or conveyance from the applicant's address as listed on the litter permit. Puppies or kittens being bartered for, sold, given away or other transfer or conveyance on public or commercial property even with the property owner's permission are in violation of this title.

F. Every dog or cat offered for sale, barter, given away, adopted or any other transfer or conveyance will have been given age appropriate vaccinations by a veterinarian. A certificate providing the name of the veterinarian and the date of treatment must be provided to the recipient at the time of transfer.
(Ord. No. 1024, 11-2-2009)

6.04.170 Reduced cost spay and neuter program.

The City of Hobbs has a targeted dog or cat spay and neuter program aimed at assisting those citizens most in need: the elderly, disabled, or very low income.

A. Participants must meet one of following requirements (income information is subject to verification):

   1. Elderly (Seventy (70) or more years of age);

   2. Disabled (qualify for Social Security disability income payments); or

   3. Low income (eligible for LIHEAP).

B. Cost to participants required pursuant to this section shall be established and adopted through resolution adopted by the Commission.

C. Spay and neuter program includes the surgery, vaccinations (FVRCP and Rabies/cat or DHLPP and Rabies/dog), one (1) night's hospitalization, and return visit for suture removal, if needed.

D. There shall be a charge to participants who fail to keep an appointment or do not provide four (4) business days notice to cancel an appointment. This charge shall be established and adopted through resolution.

E. Minimum age of dog or cat at time of surgery is three (3) months.

F. Dogs must be restrained on a leash and cats must be in a carrier upon arrival at the Hobbs Animal Adoption Center.

G. If the animal needs to be treated for flea and tick infestation prior to surgery, the additional days of care will be charged the "boarding fee" rate.

H. City Manager reserves the right to postpone surgery or refuse to perform surgery if the animal is not healthy enough to undergo surgery.

(Ord. No. 1024, 11-2-2009)

6.04.180 Discount spay or neuter certificates.

A. Animal Protection Department shall make available to citizens of Hobbs a certificate to spay or neuter one (1) cat or dog which may be used at any veterinary clinic accepting such certificate.

B. Certificate shall be limited to one (1) per household per year based on annual funding.

C. Certificate shall expire sixty (60) days after issue and shall not be renewed.

D. Proof of City residency is required. Acceptable proof includes, but is not limited to:

1. Current utility bill showing service address within Hobbs city limits.
2. Voter registration card showing Hobbs address.
3. Written statement from a City Commissioner verifying residency within their district.

E. Proof of current rabies vaccination and valid city license is required for dog or cat to be sterilized.

F. Certificate holder is responsible for contacting veterinary clinic to arrange for surgery.

G. Certificate holder is liable to veterinary clinic for all charges and services in excess of face value of certificate.

(Ord. No. 1024, 11-2-2009)

6.04.190 Adoption of dogs and cats.

A. No dog or cat over the age of three (3) months shall be adopted to a forever home unless it has been spayed or neutered.

B. Persons adopting a dog or cat under three (3) months of age shall sign an agreement to return the animal to the adoption center at a set date for sterilization or before date for sterilization, provide proof the animal has been sterilized by a licensed veterinarian. Proof must include a picture and clearly describe the animal.

C. Failure to return animal for sterilization at the adoption center or to provide proof animal has been sterilized is a violation of this chapter.
(Ord. No. 1024, 11-2-2009)

6.04.200 Animals biting persons.

A. The owner of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Animal Protection Department within twenty-four (24) hours of the occurrence. The owner of an animal that bites a person shall surrender said animal to an Animal Protection Officer if the officer deems it necessary to impound said animal for a period of observation.

B. A physician who renders professional treatment to a person bitten by an animal shall report to the City Manager that he has rendered professional treatment within twenty-four (24) hours of his first professional attendance. The physician shall report the name and address of the person bitten as well as the type and location of the bite. The physician shall report the name and address of the owner of the animal that inflicted the bite, if known and any other facts or details that may assist the Animal Protection Officer in ascertaining the immunization status of the animal.

C. An animal that bites a person shall be confined and observed for a period of ten (10) days from the date of the bite at the animal adoption center, a veterinary hospital or an approved kennel. However, if the animal has a current vaccination for rabies, the City Manager may permit quarantine of such animal at the owner's home. Home confinement shall not be permitted unless the premises have been inspected and approved for such purpose by the Animal Protection Officer. If observance of the animal is denied or prevented, the animal shall immediately be confined at the animal adoption center for the remainder of the quarantine period. The owner of the animal shall bear the cost of confinement. The owner of the animal shall be required to enter into an indemnity agreement on a form approved and prescribed by the City Manager for such home confinement.

D. If the animal shows signs of sickness, abnormal behavior, or if the animal escapes confinement, the person shall immediately notify the Animal Protection Department. The person having custody of an animal that dies during the confinement period shall notify the Animal Protection Department and surrender the carcass of the animal to an Animal Protection Officer.

E. If an officer deems it necessary to impound an animal for observation for violation of the above conditions and/or severity of the bite, the owner cannot remove the animal from observation until the observation period is complete. The owner shall bear the cost of confinement.

F. The owner of any animal over three (3) months of age that has bitten a person shall be required to pay the reclaim fee, sterilization fee or provide proof of sterilization before the animal will be released from impound restrictions.

G. It is unlawful for a person to keep an animal known to have bitten any person on two (2) separate incidents. The owner has a duty to destroy said animal humanely or surrender such an animal to the Animal Protection Department for proper humane euthanizing upon the order of the court. This does not include an animal which bites, attacks, or injures a person unlawfully upon its owner's premise. (Ord. No. 1024, 11-2-2009)

6.04.210 Animal license.

A. It is unlawful for any person to own or harbor a dog, canine hybrid or cat over the age of three (3) months without obtaining a license for such animal. Persons who are not City residents and who keep such an animal in the City for less than fifteen (15) consecutive days or less than thirty (30) days in a calendar year shall be exempt from this license requirement.

B. Applications for licenses shall be made on forms provided by the Animal Protection Department. All applications shall include the name of the legal owner of the animal, the mailing address and physical address of the owner. It is unlawful for any person to knowingly falsify information concerning animal ownership, the owner's address, animal description, or any other information required on the application.

C. Licenses shall be purchased for one (1) year. A three-year license may be purchased if the animal has a current three-year rabies certificate, which is good for at least two-thirds of the licensing period. A one-year or three-year license must be renewed upon its expiration date. Failure to renew the license within thirty (30) days of the expiration date shall result in the assessment of a penalty fee in addition to the cost of the license.

D. A current rabies certificate must be presented at the time of applying for a license.

E. Pet identification is mandatory. Identification techniques may be used that reflect technological advances, such as microchip technology, if owner information is obtainable by an Animal Protection Officer, Shelter, Veterinarian, or other appropriate organization. Methods of identification should include one (1) of the following, but is not limited to, microchip, license tags, identification tags, or tattoos applied by a veterinarian.

1. If the only means of identification used is a tag, the current license tag shall be securely affixed to the collar or harness which shall be worn by the animal at all times unless the animal is being housed in a kennel or veterinary hospital, or appearing in a bona fide animal show, or is being trained; provided, however, that the person who is training the animal shall have in his personal possession a valid license tag for each animal and shall immediately display the license upon request by the Animal Protection Department.
2. Identification methods must be kept up to date and current with owner information.

F. License tags shall not be transferred from animal to animal.

G. The license fee shall not apply to qualified service animals. All other licensing requirements shall apply.

H. Shelters facilities, refuge establishments and approved rescue foster homes are exempt.

I. License expires December 31st of year purchased or third year as applicable. (Ord. No. 1024, 11-2-2009)

6.04.210 Number of animals allowed.

A. No person or household shall own, harbor or keep more than a combined total of five (5) dogs or cats or any combination thereof over the age of three (3) months without a valid shelter-refuge-professional animal permit, hobby breeder site permit or multiple animal site permit.

1. A household may have up to five (5) dogs or cats or any combination thereof provided that all of the animals shall be sterilized.
    a. A medical waiver certificate may be acceptable in cases when the sterilization of an animal would pose a substantial threat to the health of the animal. The certificate shall be on official letterhead from a licensed veterinarian and shall contain the name and address of the owner of the animal, a description of the animal, the medical condition prohibiting

sterilization, and the date upon which the animal may be sterilized. A medical waiver certificate must be resubmitted annually. This does not waive the reclaim fee.

2. No person or household shall permit or allow the breeding of a dog or cat in the absence of a valid hobby breeder site permit or litter permit.

3. No person or household may own, harbor or keep more than four (4) canine hybrids, all of which must be sterilized, and such ownership of canine hybrids shall not result in a combined number of dogs, cats or canine hybrids totaling more than five (5).

(Ord. No. 1024, 11-2-2009)

6.04.230 Multiple animal site permit.

A. Any person intending to exceed the maximum limit of dogs and cats in a household as defined in Section 6.04.210 shall obtain a multiple animal site permit.

B. All dogs and cats at a multiple animal site shall be licensed, spayed or neutered and have current vaccinations. The only exception would be an animal which is unable to be sterilized due to medical reasons. The owner must present valid veterinary certificate as defined in Subsection 6.04.210(A)(a)(1) of this chapter. This does not waive the reclaim fee.

C. Fostering a pregnant dog or cat and her eventual offspring is a temporary exception to this rule.

D. Adjoining property owners may petition the City Manager for a revocation, modification or suspension of a multiple animal site permit if the adjoining property owner is reasonably aggrieved by any effects of the multiple animal site.

E. No person shall keep or maintain more than fifteen (15) dogs or cats or any combination thereof at any multiple animal site permit location, no more than two (2) of which can be unsterilized.

F. The area provided for the dogs and cats whether in secure runs, kennels or security perimeter fence must be as follows:

1. Seventy-five (75) square feet of area shall be provided for each dog weighing less than thirty (30) pounds;

2. One hundred (100) square feet for each dog weighing between thirty (30) and fifty-nine (59) pounds;

3. One hundred twenty-five (125) square feet per dog over sixty (60) pounds; and
4. Twenty-five (25) square feet of space per cat excluding the area occupied by the litter box.

G. Dogs may not be secured on a trolley system.

H. Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection on an annual basis or upon reasonable notice. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.

I. Rescue animals shall be exempt from the fee for a multiple animal site permit while in the custody and care of the rescue organization or individual. Accurate records shall be kept and maintained by the rescue organization or individual, and a City of Hobbs Animal Protection Officer or other City official shall be permitted at any reasonable time to inspect such records and the rescue animals' living conditions.
(Ord. No. 1024, 11-2-2009)

6.04.240 Restraint of dogs.

A. A person owning or having charge, custody, care, or control over a dog, shall keep the dog upon his or her own premises by either a secure run or kennel area, an enclosure surrounding the perimeter of the property, or on a trolley device, or any other acceptable means. Direct point chaining to stationary objects is prohibited. Any dog not deemed dangerous and not within a secure enclosure may be restrained by means of a trolley system, or a tether attached to a pulley on a cable run on its owner's property, subject to the following conditions:

1. No canine hybrid can be tethered to a trolley system.
2. Trolley system shall not be used for any dog that has not been sterilized.
3. Only one (1) dog per household may be tethered to a trolley system.
4. There must be a swivel on each end of the tether to minimize tangling.
5. The tether and cable run must be of adequate size and strength to effectively restrain the dog. The size and weight of the tether must not be excessive, as determined by the Animal Protection Officer, considering the age, size and health of the dog.

6. The cable run must be at least ten (10) feet in length and mounted either at ground level or at least four (4) feet above ground level.

7. The trolley system must be designed to prevent the dog from being within four (4) feet of the property boundary.

8. A dog attached to a trolley system shall be surrounded by a barrier on each side adjoining a public access. The barrier shall be sufficient to prevent children from accidentally coming into contact with the dog.

9. The tether must be at least ten (10) feet in length unless such length allows the dog to move within four (4) feet of the legal boundary of the property, in which case the tether shall be no less than eight (8) feet in length. If the size of the property will not allow a tether of no less than eight (8) feet, a trolley system shall not be used.

10. The tether must be affixed to the dog by use of a non-abrasive, comfortably fitted harness. Prong-type, pinch-type, or choke collars shall not be used.

11. The device must be fastened so that the dog can sit, walk, and lie down comfortably, and must be unobstructed by objects that may cause the device or dog to become entangled or strangled.

12. The dog must have easy access to adequate shelter, shade, food, and potable water.

13. The area where the dog is confined must be kept free of garbage and other debris that might endanger the animal's health or safety. Feces shall be cleaned up daily.

14. The area where the dog is confined must be kept free of insect infestation, such as anthills, wasps' nests, and infestations of fleas, ticks or maggots.

B. Any dog deemed dangerous shall be confined as defined in Chapter 6.05 of this title, but does not include chaining, restraining, or otherwise affixing the animal to a stationary object.

C. The use of a crate is prohibited as a means of outdoor confinement.

D. Secure run or kennel area must provide, as a minimum, seventy-five (75) square feet of area for each dog weighing less than thirty (30) pounds; one hundred (100) square feet for each dog weighing between thirty (30) and fifty-nine (59) pounds, one hundred twenty-five (125) square feet per dog over sixty (60) pounds.

E. A dog is permitted on the street and in other public places only if on a secure leash not exceeding six (6) feet in length. Longer retractable leashes may be used, provided the person with the dog is capable of controlling the dog. All other animals must be secured in a fashion acceptable for the species of animal. A person physically capable of controlling and restraining the animal must exercise immediate custody. This section does not apply when an animal is participating in a bona fide animal show authorized by the City or appropriate authorities.

F. Nothing in this section shall be construed as allowing any animal under physical restraint to commit any act defined as unlawful in this chapter.

G. A person who uses electric or invisible fencing designed to confine an animal to his property must clearly post a notice in two (2) separate locations upon the property that such a device is in use.
(Ord. No. 1024, 11-2-2009)

State law reference—Authority to prohibit the running at large of animals, NMSA 1978, §§ 3-17-1 (1993), 3-18-3(A)(2) (1971), 77-1-12 (1979).

6.04.250 Vaccinations.

A. It is the duty of a person owning or keeping a dog or cat over the age of three (3) months to have the animal vaccinated against rabies as prescribed by NMSA 1978, § 77-1-3 (1979). The City Manager may require that other animals have annual rabies vaccinations.

B. The veterinarian administering anti-rabies vaccines to any animal shall issue the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the name and address of the owner of the animal, a description of the animal vaccinated, the date of vaccination, and the date immunity expires.

C. The veterinarian shall also furnish the owner or keeper with a metal tag bearing the certificate number. A current rabies tag shall be affixed by the owner or keeper to a collar or harness worn by the animal at all times unless the animal is being kept in an approved kennel or veterinary hospital, is being trained by a professional trainer or is appearing in an approved show.

D. It is unlawful for the owner of any dog or cat or any other member of the canine or feline family to fail to exhibit its certificate of vaccination upon demand by the City Manager. This subsection does not apply to any animal under control of the shelters.

E. For licensing purposes a medical waiver certificate may be acceptable in cases when the rabies vaccination of an animal would pose a substantial threat to the health of the animal. The certificate shall be on official letterhead from a licensed veterinarian and shall contain the name and address of the owner of the animal, a description of the animal, the medical condition prohibiting vaccination, and the date upon which a vaccination may be given. A medical waiver certificate must be resubmitted annually.
(Ord. No. 1024, 11-2-2009)

Cross reference—Health and Sanitation, Ch. 42.

State law reference—Rabies Control Generally, NMSA 1978, §§ 77-1-5 (1973), 77-1-6 (1979), 77-1-10 (1979).

6.04.260 Abandonment.

It is unlawful for a person to abandon an animal. Abandonment does not apply to the trap, neuter and return (TNR) of feral cats. A person or organization managing un-owned cats by trap, neuter and return is not deemed the owner, keeper, holder or possessor of such cats.
(Ord. No. 1024, 11-2-2009)

6.04.270 Admission of qualified assistance animals to public places.

Notwithstanding any other provision of law, a qualified assistance animal shall be admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters; provided that the qualified assistance animal is under the control of a person with a disability or a trainer of assistance animals. No person shall be required to pay any additional charges for his qualified assistance animal, but shall be liable for any damage done by his qualified assistance animal.
(Ord. No. 1024, 11-2-2009)

State law reference—Similar Provisions, Assistance Animal Act, NMSA 1978, §§ 28-11-1.1 through 28-11-4 (2005).

6.04.280 Animals disturbing the peace.

A. It is unlawful for a person to allow an animal to persistently or continuously bark, howl or make noise common to their species or otherwise disturb the peace and quiet of inhabitants of the City. Persistent, continuous or loud intermittent noise between the hours of 9:00 p.m. and 7:00 a.m. which can be heard more than fifty (50) feet from the source of the noise is prima facie evidence of violation of this subsection.

B. It is unlawful to keep or maintain an animal in such an unclean or unsanitary manner that it disturbs others by noxious or offensive odors.
(Ord. No. 1024, 11-2-2009)

6.04.290 Animals killing or injuring livestock or protected wildlife.

A. It is unlawful for a person to keep an animal known to have killed or injured livestock or protected wildlife. The owner has a duty to destroy said animal humanely or surrender such an animal to the Animal Protection Department for proper humane euthanizing upon the order of the court.

B. An owner of livestock shall have the right to kill an animal that has injured or killed livestock or protected wildlife while it is upon property controlled by the owner of the livestock.
(Ord. No. 1024, 11-2-2009)

6.04.300 Dogs or livestock on unenclosed properties.

It is unlawful for a person to harbor, tether, stake out, or herd a dog or livestock on an unenclosed premise in such a manner that may allow the animal to go beyond the property line.
(Ord. No. 1024, 11-2-2009)

6.04.310 Animal poisoning.

A. It is unlawful for a person to make accessible to any animal, with the intent to cause harm or death, any substance which has been treated or prepared with a harmful poisonous substance.

B. This section does not apply to placement of such substance(s) in order to control vermin of significance to the public health.
(Ord. No. 1024, 11-2-2009)

6.04.320 Dogs or livestock running at large.

A. It is unlawful for a person to allow or permit any dog or livestock to run at large in or on any alley, street, sidewalk, vacant lot, public property, other unenclosed place in the City, or private property without the permission of the property owner.

B. A dog or livestock permitted to run at large in violation of this section is declared to be a nuisance and a menace to the public health and safety. Such animal may be taken up and impounded. An Animal Protection Officer may go upon

private property in pursuit of an animal which is running at large unless permission to make such pursuit is explicitly refused by the occupant. An officer may not enter a private building or residence in pursuit of an animal.

C. A working dog performing such acts as herding or search and rescue that is under the control and supervision of the owner or handler shall not be considered as unleashed while performing its duties. A hunting, obedience, tracking or show dog that is under the control and supervision of the owner or handler shall not be considered as unleashed while performing in those capacities.

D. It is unlawful for an owner, manager, agent, or governing board of any multiple dwelling unit, including mobile home parks and gated communities, to permit any animal to run at large upon the common areas of the multiple dwelling unit.
(Ord. No. 1024, 11-2-2009)

6.04.330 Injury to animals by motorists.

Every operator of a motor or self-propelled vehicle upon the streets and ways of the City shall immediately upon injuring, striking, maiming or running down any animal provide immediate notification to the Animal Protection Department, furnishing sufficient facts relative to the incident. Such animal shall be deemed an uncared for animal within the meaning of Subsection 6.04.090(K) of this chapter.
(Ord. No. 1024, 11-2-2009)

6.04.340 Animals transported in vehicles.

Animals must be kept safe during transport.

A. Pickup Trucks. Animals that are transported in the bed of a pickup truck must be protected from extreme temperatures and provided with a non-metal surface to sit or stand on.

   1. Crate. If an animal is put in a crate or other enclosure, the crate or enclosure must be securely fastened to the bed or sides of the truck so that the crate or enclosure cannot, slide, turn over or fall out.

   2. Protection from Weather. No animal shall be left in the bed of a truck whether in a crate or not when the weather is such that the animal will be exposed to extreme heat, cold or rain.

B. Cars, Vans and RVs. Animals riding inside vehicles that are not in crates or other enclosures must not be allowed access to a window opened wide

enough for the animal to jump or fall. Animals riding in open topped or open sided vehicles must be secured in a humane manner to insure the animal cannot jump or fall.

C. Transporting More Than One Animal. In addition to all other regulations in this article, animals should never be overcrowded when being transported. If the animals are crated or kept in any enclosure, they may be allowed to share a crate but each animal should be able to stand up, move around, lie down and stretch out naturally. If crates or enclosures are stacked, they must be attached securely to prevent the crates or enclosures from falling or turning over. If crates or other enclosures are stacked, the crates or enclosures must have solid bottoms to prevent urine or feces from passing between crates and enclosures.

D. No person shall intentionally, knowingly or recklessly leave an animal unattended in a closed vehicle for any length of time without providing adequate ventilation to prevent the temperature in the vehicle from rising high enough such that any reasonable person would know that the animal would suffer from heat exposure. An animal left in a closed vehicle without the interior of the vehicle being air conditioned when the ambient temperature is over eighty (80) degrees, shall be prima facie evidence of a violation of this chapter. If the City Manager determines that an animal in a vehicle is in immediate danger, the City Manager or police officer may enter the vehicle by whatever means necessary, without being liable to the owner of the vehicle for any damage, and seize the animal. The animal's owner shall be responsible for all expenses related to the removal of the animal, emergency veterinary treatment and impoundment. If the City Manager or police officer cannot determine who confined the animal, the registered owner of the vehicle will be cited.

(Ord. No. 1024, 11-2-2009)

6.04.350 Animal waste.

It is unlawful to permit an animal to defecate on public or private property other than the property of the owner of the animal unless such animal waste is immediately removed and properly disposed of by the person having custody of the animal.
(Ord. No. 1024, 11-2-2009)

6.04.360 Breaking into animal protection facilities or vehicles.

It is unlawful for a person to break into any pound, center, facility, kennel or vehicle wherein animals are impounded, or to in any manner remove or assist in the removal of any animal or equipment from such.
(Ord. No. 1024, 11-2-2009)

6.04.370 Care and maintenance.

A. It is unlawful for a person to fail, refuse or neglect to provide any animal in his charge or custody such care and husbandry as to maintain the good health and well-being of the animal. Such care and husbandry shall include, but not be limited to, adequate food appropriate to species, potable water, adequate living area, professional veterinary care and necessary grooming to maintain good health and protection from extreme weather elements. Animals shall be provided adequate space to prevent overcrowding and to maintain normal exercise according to species, size and temperament.

B. Any animal habitually kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal and to provide proper ventilation, temperature and sufficient shade.

C. For livestock, it is unlawful for a person to fail, refuse and/or neglect to provide any livestock in his charge or custody with such care and husbandry as to maintain the good health and well-being of the animal. Such care and husbandry shall include, but not be limited to, nutritious food in sufficient quantity provided daily, fresh clean potable water available at all times, clean adequate space, necessary veterinary care, necessary hoof care, and a proper shelter or protection from weather.
(Ord. No. 1024, 11-2-2009)

6.04.380 Confinement of female dogs or cats in mating season.

A. A person in control of a female dog or cat in mating season shall confine such dog or cat so as to prevent other dogs or cats from attacking or being attracted to such female animal, except for intentional breeding purposes.

B. It shall be unlawful to maintain a female dog or cat in mating season in any manner that creates a public nuisance.
(Ord. No. 1024, 11-2-2009)

6.04.390 Concealment of animal.

It is unlawful for any person to conceal any animal from the officers charged with the enforcement of this chapter.
(Ord. No. 1024, 11-2-2009)

6.04.400 Fights.

A. It is unlawful for a person to promote, stage, hold, manage, conduct, carry on or attend any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming or destroying themselves or any other animal.

1. It is unlawful for any person to sell, receive, possess, transport, loan, or give away any animal fighting paraphernalia.
2. It is unlawful for any person to raise, train, condition, sell, receive, possess, transport, loan, or give away animals for fighting purposes whether or not the fight is to be conducted inside or outside the jurisdiction of the City of Hobbs.
3. No person shall provoke or entice an animal from the property of its owner for the purpose of engaging the animal in an animal fight.

B. Nothing in this section shall prohibit a person from engaging in legal hunting practices as allowed by state wildlife authorities.
(Ord. No. 1024, 11-2-2009)

State law reference—Dog Fighting and Cockfighting, NMSA 1978, § 30-18-9 (2007).

6.04.410 Fowl; impounding or crating.

It is unlawful for a person to confine any wild or domestic fowl or birds unless provisions are made by such person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than twelve (12) hours. No person shall impound wild or domestic fowl or birds in a crate, box or other enclosure unless such fowl or bird is in a natural erect position unless such position causes injury or damage to the fowl or bird.
(Ord. No. 1024, 11-2-2009)

6.04.420 Interference with the Animal Protection Officer in the performance of his duties.

A. No person shall attack, assault or in any way threaten or interfere with the Animal Protection Officer in the performance of the duties required by this chapter.

B. No person shall conceal one's true name or identity or disguise oneself with the intent to obstruct due execution of the law or with the intent to intimidate, hinder or interrupt an Animal Protection Officer in the legal performance of his or her duties.

C. No person shall interfere with or tamper with any equipment used by Animal Protection Officers, including release of animals contained in such equipment.

D. No person shall engage in conduct that would agitate, obstruct, oppose, or distract an Animal Protection Officer in the legal performance of his or her duties.
(Ord. No. 1024, 11-2-2009)

6.04.430 Keeping a seriously sick or injured animal.

A. It is unlawful for a person to have, keep or harbor an animal which is seriously sick or injured, including starvation, without providing proper veterinary care.

B. The City Manager may require the owner to provide a letter of health evaluation from a licensed veterinarian describing the condition of the animal and the treatment provided. The Animal Protection Department may evaluate the condition of an animal.

C. In the absence of proper veterinary care, the City Manager may impound such a seriously sick or injured animal in accordance with the provisions of this chapter.

D. Any such animal impounded may be destroyed humanely or otherwise disposed of according to the normal procedures of the impound facility as soon thereafter as is conveniently possible.
(Ord. No. 1024, 11-2-2009)

6.04.440 Keeping domesticated livestock and fowl.

A. It is unlawful to keep, harbor or maintain within the City limits any horses, mules, burros, cows, pigs, goats, sheep, swine and all other domesticated animals used in the production of food, fiber, or other products except as provided in Ordinance 1018 "Rural and Open Space Planning Districts" (Chapter 18.08 of this code).

B. It is unlawful to keep more than one (1) fowl except as provided in Ordinance 1018 "Rural and Open Space Planning Districts" (Chapter 18.08 of this code).
(Ord. No. 1024, 11-2-2009)

6.04.450 Sale and display of animals.

A. A person shall only sell, offer for sale, barter, give away or otherwise dispose of an animal at the physical address listed on the appropriate permit issued by the City Manager. The applicable permit number is to be displayed legibly in all advertisements and furnished to any potential recipient upon request. Shelters shall be allowed off-site adoption events, with permission of site owner and while preserving appropriate care and maintenance of animals.

B. No person shall offer for sale, sell, barter or give away turtles except in conformance with the appropriate federal regulations.

C. No person shall offer an animal as a prize, giveaway or award for a contest, game, sport or as an incentive to purchase merchandise.

D. Animal Exhibits.

a. No person shall operate, conduct, or maintain a permanent or temporary commercial animal show, circus, animal exhibition, animal ride, petting zoo or carnival without first having obtained a permit from the Animal Protection Department. Conditions for permit approval include provisions for the humane care and treatment of the animals and the protection of public safety. Permits shall not be issued upon verification that within the preceding twelve (12) months the applicant has been convicted of charges of animal cruelty, abuse, or neglect, or has violated the Federal Animal Welfare Act.

b. No person shall operate, conduct or maintain any animal exhibit under conditions that pose a danger to the public or the animals. Specific requirements shall be available upon request to the Animal Protection Department.

c. The following are exempt from the requirements of this section:

    1. Individuals or groups holding a State of New Mexico regulated permit or a federally regulated permit.

    2. Events sponsored by a municipal zoo or aquarium facility.

    3. Competitive sporting events.

d. Persons involved in these exempt activities shall comply with all other applicable sections of this chapter.

(Ord. No. 1024, 11-2-2009)

6.04.460 Sterilization agreements/contracts.

It shall be unlawful for a person to possess any unsterilized animal when such animal is required to be sterilized under the terms of any applicable sterilization agreement or contract originating from any municipal or non-profit shelter.
(Ord. No. 1024, 11-2-2009)

6.04.470 Unlawful use of rabies tag.

It is unlawful for any person to remove or transfer any rabies tag from one animal to another. It is unlawful for any person to manufacture or cause to be manufactured or to have in his possession or under his control a stolen, counterfeit or forged animal license tag, rabies tag, vaccination certificate or other form of licensing or permitting required under this chapter.
(Ord. No. 1024, 11-2-2009)

6.04.480 Improper disposal of animals.

Deceased animals shall be properly disposed of in accordance with this article. Following the death of an animal, the owner shall be responsible for removing the corpse immediately and disposing of the body by either private burial or taking the animal to the Hobbs Animal Adoption Center. It is unlawful to dispose of the body of any animal by dumping the corpse on public or private property, roads or rights-of-way.
(Ord. No. 1024, 11-2-2009)

6.04.490 Vicious or dangerous animals.

A. It is unlawful for any person to keep or harbor a vicious animal. When an Animal Protection Officer has probable cause to believe that an animal is vicious, the officer may take up and impound the animal into protective custody awaiting appropriate court proceedings. Following judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this chapter, shall, in addition to any fine or imprisonment imposed for violation of this section, order the owner or keeper of such vicious animal to destroy it humanely or turn such animal over to the City Manager for destruction.

B. It shall be unlawful to maintain a dangerous animal in a manner which constitutes a threat to any person or other animal.

C. Any dog that is deemed dangerous by admission of owner or by court determination shall register the dog with Animal Protection Department by obtaining a dangerous dog permit.
(Ord. No. 1024, 11-2-2009)

Chapter 6.05 DANGEROUS DOG

6.05.010 Short title.

This chapter may be cited as the "Dangerous Dog Chapter".
(Ord. No. 1024, 11-2-2009)

6.05.020 Definitions.

As used in the Dangerous Dog Chapter:

"Dangerous dog" means a dog that caused a serious injury to a person or domestic animal.

"Owner" means a person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of eighteen (18), that person's parent or guardian.

"Potentially dangerous dog" means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by one or more of the following behaviors:

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

"Proper enclosure" means secure confinement indoors or outdoors in a kennel, pen or structure with secure sides and a secure top and bottom attached to the sides, that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or otherwise tethering the animal.

"Serious injury" means a physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.
(Ord. No. 1024, 11-2-2009)

6.05.030 Exceptions.

A dog shall not be declared a dangerous or potentially dangerous dog if:

a. The dog was used by a law enforcement official for legitimate law enforcement purposes.

b. The threat, injury or damage was sustained by a person or domestic animal that was:

   1. Trespassing upon premises occupied by the owner of the dog.

   2. Provoking, tormenting, abusing or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog.

   3. Committing or attempting to commit a crime.

c. Or the dog was:

   1. Responding to pain or injury.

   2. Protecting itself or its offspring.

   3. Protecting or defending a human being or domestic animal from attack or assault.

(Ord. No. 1024, 11-2-2009)

6.05.040 Seizure of dog; petition to court.

A. If an Animal Protection Officer has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the Animal Protection Officer may apply to a court of competent jurisdiction in the City where the animal is located for a warrant to seize the animal.

B. If an Animal Protection Officer has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the Animal Protection Officer may apply to a court of competent jurisdiction in the City where the animal is located for a warrant to seize the animal.

C. After seizure, the Animal Protection Officer shall impound the dog pending disposition of the case or until the owner has fulfilled the requirements for maintaining a dangerous or potentially dangerous dog in this chapter.

D. After seizure:

1. The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for maintaining a dangerous or potentially dangerous dog pursuant to Section 6.05.050 of this chapter; or

2. The Animal Protection Department may, within fourteen (14) days after seizure of the dog, bring a petition in court seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within thirty (30) days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to the owner.

E. If the owner does not admit that the dog is dangerous or potentially dangerous and the Animal Protection Department does not bring a petition in court within fourteen (14) days of seizure of the dog, the court shall immediately order the release of the dog to its owner.

F. If the owner admits that the dog is dangerous and transfers ownership of the dog to the Animal Protection Department, the Department may humanely destroy the dog.

G. A determination that a dog is not dangerous or potentially dangerous shall not prevent an Animal Protection Officer from making a subsequent application for seizure based on the dog's subsequent behavior.
(Ord. No. 1024, 11-2-2009)

6.05.050 Registration and handling requirements for dangerous and potentially dangerous dogs.

A. Animal Protection Department shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes that:

1. The owner is able to keep the dog under control at all times.

2. A City license has been issued.

3. The dog has a current rabies vaccination.

4. The owner has a proper enclosure for the dog which shall be kept locked at all times when the vicious dog is within the structure.
5. The owner has paid an annual fee, if applicable, established by the Animal Protection Department to register a potentially dangerous dog.
6. The dog has been spayed or neutered.
7. The dog has been implanted with a microchip containing owner identification information that is also provided to the Animal Protection Department.
8. The owner has entered the dog in a socialization and behavior program approved or offered by the Animal Protection Department.

B. If a dog previously determined to be potentially dangerous has not exhibited any of the behaviors which define a potentially dangerous dog for thirty-six (36) consecutive months, the owner may request the Animal Protection Department to lift the requirements for registration pursuant to this section. If the Animal Protection Department has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.

C. Animal Protection Department shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of subsection A of this section, establishes that:

1. The owner has paid an annual fee, if applicable, established by the City to register a dangerous dog;
2. The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable;
3. The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination;
4. When the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four (4) feet, and the dog shall be under complete control at all times;
5. The dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and
6. A clearly visible warning sign with a conspicuous warning symbol indicating that there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty (50) feet, whichever is less.

D. Animal Protection Department may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to abide by the conditions for registration, confinement or handling set forth in this section.
(Ord. No. 1024, 11-2-2009)

6.05.060 Prohibited acts; penalties.

A. It is unlawful for an owner of a dangerous or potentially dangerous dog to:

a. Keep the dog without a valid certificate of registration.

b. Violate the registration and handling requirements for the dog.

c. Fail to notify the Animal Protection Department immediately upon:

1. The escape of the dog.

2. An attack by the dog upon a human being or a domestic animal.

3. Fail to notify the Animal Protection Department of the dog's death within five (5) business days.

4. Fail to notify the Animal Protection Department within twenty-four (24) hours if the dog has been sold or given away and provide the name, address and telephone number of the new owner of the dog.

5. Fail to surrender the dog to an Animal Protection Officer for safe confinement pending a determination of the case when there is reason to believe that the dog poses an imminent threat to public safety.

6. Fail to comply with special handling or care requirements for the dog that a court has ordered.

B. Whoever violates a provision of paragraph A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of the City of Hobbs Municipal Code.
(Ord. No. 1024, 11-2-2009)

State law reference—Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to 77-1A-6 (2005).

Chapter 6.06 WILD ANIMALS; CANINE HYBRIDS; VIETNAMESE POTBELLIED PIGS

Sec. 6.06.010 Wild animals.

A. It shall be unlawful for a person to own, harbor, keep or exhibit on any private or public property in the City any wild animal of a species that in its natural life is dangerous or ferocious. Such animals, though they may be trained and domesticated, remain a danger to others, and include:

1. Wolves, foxes, coyotes, dingoes, and other members of the non-domestic canine families.
2. Lions, pumas, panthers, mountain lions, wild cats, and other members of the non-domestic feline families.
3. All bears (ursidae), including grizzly bears, black bears, brown bears, etc.
4. Raccoons (procynnidae), including eastern raccoon, desert raccoon, ring tailed cat, etc.
5. Primates (hominidae), including all non-human great apes other than qualified service animals.
6. Skunks.
7. Bats.
8. Non-indigenous poisonous snakes.
9. Alligators, crocodiles, caimans, or poisonous lizards.
10. Venomous fish and piranha.
11. Elephants (elephatidae).

B. This section shall not apply to municipal zoos and aquarium facilities, veterinary facilities, or individuals or organizations holding a State of New Mexico regulated permit or a federally regulated permit.
(Ord. No. 1024, 11-2-2009)

Sec. 6.06.020 Canine hybrids.

A. No person shall purchase, sell, offer for sale, or advertise for sale any animal that is represented to be the offspring, cross, mix, or hybrid of a wolf or coyote.

B. No person shall possess a canine hybrid without a valid canine hybrid permit. A person may apply for such a permit under the following conditions:

1. Submission of a permit application.

2. Submission of written proof from a licensed veterinarian that all animals over the age of six (6) months for which a permit is requested have been spayed or neutered.

3. All owners of permitted property shall grant reasonable access to permitted premises. Upon presenting proper identification and at a reasonable hour, a representative of the Animal Protection Department shall be allowed access to any permitted premises for the purpose of inspection. Permits may be suspended for failure to comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.

4. Payment of the annual permit fee, if applicable.

C. A permit shall not be issued until the applicant provides an adequate physical enclosure that completely and effectively confines all animals to the property of the owner. An Animal Protection Officer shall determine the adequacy of the enclosure.

1. A minimum livable area of four hundred (400) square feet must be provided for up to two (2) canine hybrids, with an additional one hundred (100) square feet per animal for each additional hybrid. An exception to this subpart may be granted if the animal owner submits a written plan of adequate housing and exercise to the Animal Protection Department and such plan is approved by the department.

2. Permanent chaining or tethering may not be used as a method to contain a canine hybrid to the property of the owner. The canine hybrid must be contained with the use of a kennel, run or secure perimeter fencing.

D. A canine hybrid permit will not be issued for the ownership of more than four (4) canine hybrids.

E. Each canine hybrid must wear a collar or harness displaying an identification tag bearing the name, address, and phone number of the owner at all times while it is on and off of the owner's premises. While off of the owner's premises the hybrid shall be on a secure leash not more than six (6) feet in length and in the immediate custody of a person physically capable of controlling and restraining the animal.

F. Nothing in this section shall relieve the holder of a permit from complying with all other applicable sections of this chapter.
(Ord. No. 1024, 11-2-2009)

6.06.030 Vietnamese Potbellied Pigs or potbellied pigs.

A. It is unlawful for any person to receive, purchase, own, maintain, harbor or keep Vietnamese Potbellied Pigs or potbellied pigs without first applying for and receiving from the City an exotic livestock permit to do so.

B. It is unlawful to keep more than one (1) Vietnamese Potbellied Pig or potbellied pig.

C. The applicant must provide evidence of knowledge and facilities for the proper care and feeding of potbellied pigs. The City Manager is permitted to enter the permitted premises hereunder at any reasonable time for the purpose of inspection or reinspection to determine compliance with this section.

D. The animal shall not be in excess of sixty-five (65) pounds in weight.

E. All Vietnamese Potbellied Pigs or potbellied pigs must have received all necessary vaccinations, and a copy of vaccination certificates must be available at all times for inspection by an Animal Protection Officer. The name and address of attending veterinarian and all health certificates must be available at all times.

F. It is unlawful for any keeper to allow Vietnamese Potbellied Pigs or potbellied pigs to be left outdoors unattended or not under restraint.

G. The City Manager may deny, revoke or suspend a permit for failure to comply with this section.
(Ord. No. 1024, 11-2-2009)

Chapter 6.08 SPECIAL USE PERMIT FOR HORSE RACETRACKS AND APPURTENANT USES

6.08.010 Requirements.

A. These provisions permit uses which are special because of the unusual nature, dimensions, frequency of occurrence, effect on surrounding property or other reasons.

B. Special use permit is required for horse racetracks and appurtenant use areas that have been annexed.

C. Application for special use permit must:

1. Describe the proposed use in detail.

2. Have a plot plan showing location, dimensions of property, drainage, traffic flow, signage, and other specifications significant to the use.

3. Contain other information requested by the Planning Board.

D. Application will be reviewed by Planning Board.

1. If approved or approved with conditions, the application and conditions shall be forwarded to the City Commission for final approval.

2. If denied, applicant may modify the application and re-submit to the Planning Board or appeal to the City Commission.

E. Applicant shall be provided a copy of approved plan and/or conditions for approval.
(Ord. No. 1024, 11-2-2009)

Chapter 6.09 PENALTIES

6.09.010 Penalty.

Except as provided in this chapter, violations of this chapter are punishable as provided in the City of Hobbs Municipal code.
(Ord. No. 1024, 11-2-2009)

6.09.020 Suspensions, revocations of permits.

A. When the City manager discovers that a permitted premises is in violation of this chapter, he shall give notice of the violations to the permit holder, operator or person in charge by means of an inspection report or other written notice. The notification shall:

1. Set forth each specific violation.

2. Establish a specific and reasonable period of time for the correction of the violation.

3. State that failure to comply with a notice issued in accordance with the provisions of this chapter may result in immediate suspension or revocation of the permit.

4. State that an opportunity for appeal from a notice or inspection findings will be provided if a written request for a hearing is filed with the City Manager within five (5) days of receipt of the notice.

5. Notices under this section shall be deemed properly served and received when the original inspection report or other notice has been personally served on the person in charge, or sent by registered or certified mail to the last known address of the permit holder.

6. Permits may be suspended for failure of the holder to comply with the requirements of this chapter or other applicable laws, ordinances or regulations. The suspension may be lifted when the City Manager determines the violations have been corrected.

7. Permits may be revoked for serious or repeated violations of the requirements of this chapter, or for violation of other applicable laws, ordinances or regulations. A permit shall be revoked for one (1) year. The permit shall be surrendered to the City Manager upon suspension or revocation.

   a. A person whose permit has been suspended may apply for an inspection of the premises for the purpose of reinstating the permit. If the applicant and the site are in compliance with the requirements of this chapter and all other applicable laws, ordinances and regulations, the permit shall be reinstated. The reinstated permit shall expire on the date of expiration of the previously-suspended permit.

   b. If an exotic or wild animal permit is suspended or revoked, all animals received, purchased, owned or kept under the authority of the permit shall be surrendered to the City Manager for impoundment. After a period of at least seven (7) days, if the violations of this chapter which resulted in suspension or revocation of the permit have not been corrected, the City Manager may sell or dispose of the animal(s) as provided in this chapter. The applicant may appeal the suspension or revocation in the manner provided in Section 6.09.030 of this chapter.

(Ord. No. 1024, 11-2-2009)

6.09.030 Appeal procedures for permit denial, suspension or revocation.

A. A person whose application for a permit or permit renewal has been approved on condition or denied and a permit holder, whose permit has been suspended or revoked, may submit to the City Manager a written request for a hearing. The written

request must be received within five (5) days of the applicant's receipt of the written notice from the City. The hearing shall be conducted within a reasonable time after the City Manager receives the request for a hearing.

B. Hearings shall be conducted by a hearing officer at a time and place designated by the City Manager and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time and place of the hearing shall be mailed to the applicant and the City Manager.

C. The applicant shall be afforded a fair hearing which provides the basic safeguards of due process which shall include:

1. The opportunity to examine before the hearing and, at the expense of the applicant, to copy all documents, records and regulations of the City Manager that are relevant to the hearing. Any document not made available by the City Manager, after written request by the applicant, may not be relied upon by the City Manager at the hearing.
2. The right to be represented by counsel or other persons chosen as his representative.
3. The right to present evidence and arguments in support of his appeal to controvert evidence relied on by the City Manager, and to confront and cross-examine all witnesses on whose testimony or information the City Manager relies.
4. A decision based solely and exclusively upon the facts presented at the hearing.

D. The hearing officer shall prepare a written report of his findings and decision within ten (10) days after the hearing and shall provide copies to the parties.

E. A party who is aggrieved by the decision of the hearing officer may appeal to the City Commission.

1. The notice of appeal shall be filed in the office of the City Clerk within fifteen (15) days after the written decision is issued. If notice is filed by mail, date of receipt by Clerk shall control timeliness of appeal.
2. A copy of the appeal shall be forwarded by the City Clerk to the Animal Protection Department Supervisor.
3. The Commission shall set a date for a hearing on the appeal as soon as practicable, but in any event within thirty (30) days of receipt of notice by the City Clerk.

4. The Commission shall review the written findings and decision of the hearing officer, review the evidence for and against the decision and, if necessary, hear statements from the aggrieved party and the prevailing party.
5. The Commission shall determine if the decision should be affirmed or rescinded.
6. The decision of the Commission shall be final.

(Ord. No. 1024, 11-2-2009)

6.09.040 Severability clause.

If any section, paragraph, sentence, clause, word or phrase of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this chapter. The commission hereby declares that it would have passed this chapter and each division, section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.
(Ord. No. 1024, 11-2-2009)

Title 7

RESERVED

Title 8

HEALTH AND SAFETY

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Chapter 8.04 ALARM SYSTEMS

8.04.010 Findings.

The City Commission finds and declares that:

A. There is an increasing use of certain private emergency alarm systems by citizens of this City;

B. The Police Department has had to respond to an excessive number of false alarms from such systems resulting in a substantial expenditure of police personnel and funds;

C. Such unreimbursed expenditure of personnel and funds impedes the ability of the police to provide protection in true emergencies so that charges are necessary to reimburse the City for the responses to certain false alarms; and

D. Certain records are necessary in order to avoid an unnecessary expenditure of personnel and funds in locating the persons in control of the property when the police have been notified of an actual burglary or other emergency due to an alarm when an alarm system has been activated or is malfunctioning so as to cause a nuisance to the citizens. (Ord. 818 (part), 1994: prior code § 19-43.1)

8.04.020 Authority.

The City Commission, pursuant to the general powers; body politic and corporate powers, Section 3-18-1 NMSA 1978, specifically, to protect generally the property of its municipality and its inhabitants and to preserve peace and order within the municipality, enacts the ordinance codified in this chapter. (Ord. 818 (part), 1994: prior code § 19-43.2)

8.04.030 Short title.

This chapter shall be known, and may be cited, as the "City of Hobbs alarm system ordinance." (Ord. 818 (part), 1994: prior code § 19-43.3)

8.04.040 Purpose.

The purpose of this chapter is to provide minimum standards and regulations applicable to burglar, holdup and fire alarm systems, alarm businesses, alarm agents and alarm users as defined in this chapter. (Ord. 818 (part), 1994: prior code § 19-43.4)

8.04.050 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section. When not inconsistent with the context, words used in the present tense include the future tense; words used in the plural number include the singular number; and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Alarm system" means any mechanical or electrical device which is designed primarily for the detection of an unauthorized entry into a building, structure or facility, for alerting others of the Commission of a violent crime within a building or structure, or a fire; and which emits a sound or transmits a signal or message when actuated which causes notification to be made, directly or indirectly, to the Police Department. The representation in the ordinary course of business by a person selling or leasing a device that the device is sold or leased for the purpose of such detection shall create a presumption that the device is an alarm system. For the purposes of this definition, an "alarm system" shall not include:

1. A device installed on a motor vehicle;
2. Devices which are not designed or used to register alarms that are audible, visible or perceptible outside of the protected building, structure or facility; or devices installed in buildings, structures or facilities controlled by the State or any of its agencies, institutions or political subdivisions.

"Alarm system business" means the business of any individual, partnership, corporation or other entity engaged in selling, leasing, maintaining, servicing, repairing, altering, replacing or monitoring installation of any alarm system, or in causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, monitored or installed in or to any building, structure or facility.

"Alarm user" means any person in control of any building, structure or facility, or portion thereof, wherein an alarm system is maintained.

"Alarm user permit" means a permit issued by the City allowing the operation of an alarm system within the City.

"Automatic dialing device" refers to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.

"Central station" means that part of an alarm business which intercepts signals indicating the activation of an alarm device and which relays this information by live voice to the Hobbs Police Department.

"City" means the City of Hobbs.

"Common carrier line" means the portion of a telephone line owned and maintained by the franchised telephone company and terminating at a junction box on the outside of a subscriber's building.

"Direct connect alarm" refers to an alarm that is connected to the central alarm station at the Hobbs Police Department by a dedicated telephone cable pair.

"Direct line" means a telephone line leading directly from a central station to the communications center of the Hobbs Police Department that is for use only to report emergency signals on a person-to-person basis.

"False Alarm" means the activation of any alarm system which was not the result of an emergency or threat of emergency of the kind for which the alarm system was designed to give notice.

"Interconnect" means to connect an alarm system to a voicegrade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

"Local alarm system" refers to a signaling system which when activated causes an audible and/or visual signaling device to be activated in or on the premises within which the system is installed.

"Permit holder" means the alarm user to whom an alarm permit is issued.

"Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.

"Police" or "Police Department" means the Police Department of the City, or any authorized agent or designee thereof.

"Primary trunkline" means a telephone line leading directly into the communications center of the Police Department that is for the purpose of handling emergency calls on a person-to-person basis and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by the telephone company and covering the service area within the Police

Department's jurisdiction. The "9-1-1" emergency number is a primary trunkline. (Ord. 818 (part), 1994: prior code § 19-43.5)

8.04.060 Alarm user permits.

A. It shall be a violation of this chapter for any person to operate an alarm system without a valid alarm user permit.

B. Any alarm that is required to have a permit pursuant to this chapter and which makes notification to the Police Department either directly or via relay from a central station shall be installed and serviced only by a licensed alarm system business as defined by Section 8.04.080.

C. No person shall operate or permit the operation of an alarm system which was installed on the person's property prior to the effective date of the ordinance codified in this chapter unless a permit for such alarm system is obtained within sixty (60) days of the effective date of said ordinance. To obtain such a permit, the person in control of the property shall file an application therefor pursuant to Section 8.04.070 provided, however, this subsection shall not be applicable to an alarm system business which monitors, services, or monitors and services an alarm system installed and designed to protect property under the control of a person other than the alarm system business, but the person in control of the property which the alarm system is designed to protect shall be subject to prosecution if the person permits the operation of such system without a valid permit.

D. Prior to the installation of an alarm system after the effective date of said ordinance, the person in control of the property on which the alarm system is installed shall obtain an alarm user permit by filing an application therefore pursuant to Section 8.04.070.

E. The fee for an alarm user permit shall be ten dollars ($l0.00).

F. The permit fee shall be a one-time charge to the alarm user. The permit shall be nontransferable, and each subsequent alarm user must obtain a new permit and pay the permit fee.

G. No alarm system permit shall be issued for any alarm system in which any or all of the alarmed premises are located outside the corporate limits of the City. Any such alarm systems connected to the Hobbs Police Department direct connect alarm system on the effective date of said ordinance shall be removed from the system. (Ord. 818 (part), 1994: prior code § 19-43.6)

8.04.070 Alarm user permit application.

A. Application for an alarm user permit for the operation of an alarm system shall be made by the person having control over the premises on which the alarm system has been or is to be installed and operated. Such application shall be in writing to the Hobbs Police Department on a form designated by the City for that purpose. On such application, the applicant shall set forth:

1. The name, address and telephone number of each person in control of the property or premises;
2. The street address of the premises on which the alarm system is to be installed and operated;
3. Any business name used for the premises on which the alarm system is to be installed and operated;
4. The type of alarm system or systems and the purpose for which they are designed;
5. The names and telephone numbers of two (2) persons who are able and who, if contacted, at any time will come to the alarm site within thirty (30) minutes after receiving a request from a member of the Police Department to do so and grant access to the alarm site and to deactivate the alarm system if such becomes necessary;
6. The name of the company installing and servicing such alarm;
7. Other emergency "first responder" information, such as hazardous materials and firearms on the premises, as may be required by the Police Department.

B. The Hobbs Police Department shall issue a permit to the person in control of the property upon submission of an application therefore in accordance with this section, unless the Police Department finds that any statement made in this application was incomplete or false.

C. The Police Department shall treat all information on such application as confidential information, except as may otherwise be required by the New Mexico Public Records Act; provided, however, that nothing in this chapter shall prohibit the use of such information for legitimate law enforcement purposes and for enforcement of this chapter.

D. Whenever any of the information in subsection A of this section changes, the permit holder shall immediately file with the Hobbs Police Department an amendment in writing to the permit application of such change. Only the change in name

of the person in control of the property shall require a new permit and payment of a permit fee. (Ord. 818 (part), 1994: prior code § 19-43.7)

8.04.080 Alarm system businesses.

A. Any person whose business it is to repair or install an alarm system must possess a valid license issued by the construction industries division of the Regulation and Licensing Department of the State of New Mexico. The license must be presented upon request.

B. Whenever an alarm system business agrees with any person to maintain or service any alarm system, such business shall:

1. Ensure that personnel of such business who are able to render effective assistance arrive at such alarm site within twelve (12) hours of a request for assistance by a member of the Police Department or the person in control of the alarmed property or designee thereof, if such alarm system business has agreed with any person to respond to such alarm system. The alarm permit holder shall be responsible for any costs incurred during call-outs of the alarm service company;
2. Maintain written records for at least twelve (12) months which shall be made available for inspection and duplication, upon request by the City Manager, his or her designee, or a member of the Police Department, at the office of the alarm system business or telephone answering service during regular business hours for the following:
    a. The date and time of repair and a description of the specific repair which was performed on any alarm system when such repair was made in response to notification by the person in control of the property or a member of the Police Department that such alarm system was in need of repair,
    b. The date and time each notification of the activation of an alarm system is received and the date, time and method by which the person in control of the property or his or her designated employee was notified.

C. Any alarm system business which operates a central station and any telephone answering service shall:

1. Have sufficient personnel trained in the procedures to be followed in receiving and relaying notice of the activation of any alarm system on duty, at all times, to ensure that emergency messages or alarm signals received by such business can be relayed immediately to the Police Department;

2. Immediately notify the person in control of the property or his or her designee of the activation of the alarm system. In the case of a local alarm where the alarm system business was not notified of such activation, the alarm system business shall be exempt from the requirements of this subsection.

D. All alarm system business personnel responding to alarms, or repairing or installing alarm systems, shall wear an identification card on their outer garments, which designates the alarm system business which the person represents. This identification card shall be issued by the Police Department after application has been made on the form designated by the Police Department and after a background investigation has been conducted on that individual. No identification card shall be issued:

1. If the applicant has been convicted of a felony;

2. If the application contains any false statements made willfully and knowingly.

E. Whenever the identification of the person operating the alarm system business changes, the new operator shall, within ten (10) days, provide a list to the Police Department setting forth each address serviced by that business. (Ord. 818 (part), 1994: prior code § 19-43.8)

8.04.090 Regulations for automatic dialing service and direct connect alarms.

A. No automatic dialing service shall be interconnected to a primary trunkline to the Police Department. The Police Department shall designate a direct line number by which all automatic dialers and central stations may make alarm activation notifications to the police communication center.

B. The number of direct connect alarms is limited by the available equipment and dedicated telephone lines. When all of the available equipment is filled, no more applications will be processed until a vacancy occurs. (Ord. 818 (part), 1994: prior code § 19-43.9)

8.04.100 Nonemergency activation.

No person shall activate an alarm system for any purpose other than an emergency or threat of emergency of the kind for which the alarm system was designed to give notice; provided, however, it shall be an affirmative defense to prosecution under this section that the alarm system was sounded solely for the purpose of testing the alarm and the person who tested the alarm notified the Police Department prior to the test. (Ord. 818 (part), 1994: prior code § 19-43.10)

8.04.110 User fees.

A. The City will respond to proper notification of activation of an alarm system without charge except that the following fee shall be charged the permit holder for each response by the City to notification of activation of an alarm system in excess of three (3) false alarms from the same alarm system within the previous twelve-month period. A fee of twenty-five dollars ($25.00) shall be charged for each false alarm thereafter, and shall be paid by the user. Failure to pay within thirty (30) days of billing by the City shall be a violation of this chapter.

B. Provided, however, no notification of the activation of an alarm system shall be considered in determining the fee set out above nor shall any fee be charged if the permit holder shows that the activation was not a false alarm or that the activation was caused by mechanical, electrical or other problem stemming from the common carrier lines.

C. The permit holder shall be given written notice of any fees chargeable under this section. Such fees shall be paid to the Police Department within thirty (30) calendar days of the date of the notice of fees due. (Ord. 818 (part), 1994: prior code § 19-43.11)

8.04.120 Violations—Revocation of alarm user permits.

A. The Chief of Police or his or her designee may revoke any alarm user permit if there is probable cause to believe that a permit holder has:

1. Violated any provision of this chapter;
2. Made fraudulent, misrepresentative or false statements in the application for an alarm user permit;
3. Failed to pay fees for excessive false alarms as set forth in this chapter;
4. Incurred in excess of twelve (12) false alarms within any twelve-month period.

B. Any person whose alarm user permit has been revoked shall not be permitted to apply for another alarm user permit for one (1) year after such revocation. (Ord. 818 (part), 1994: prior code § 19-43.12)

8.04.130 Administration and applicability of other law.

The City Manager or his or her designee shall adopt such rules and regulations as necessary for the safe and equitable administration of this chapter. The issuance of an alarm user permit does not constitute a waiver of any requirement or provision

contained in any ordinance of the City or State or Federal law. (Ord. 818 (part), 1994: prior code § 19-43.13)

8.04.140 Violation—Penalty.

Any person found guilty of violating the provisions of this chapter shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment. (Ord. 818 (part), 1994: prior code § 19-43.14)

Chapter 8.08 AMBULANCES

8.08.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Base rate" means the initial charge, which includes the first mile or any parts thereof.

"Corpse" means a human body declared legally dead.

"Destination" means the point at which the patient or corpse is ultimately delivered or accepted and the vehicle released. The destination may be a hospital, mortuary, home or any other place where the patient or corpse is permanently removed from the vehicle and the vehicle released. A stop en route for the purpose of certification as to the death of a patient or in an attempt to gain admittance to a hospital shall not be construed as the destination under this chapter.

"Loaded miles" means total miles the vehicle was operated to perform the requested services.

"Patient" means a person, alive or dead, or dying en route, for whom a vehicle is ordered from the City and who knowingly or unknowingly accepts or receives the transportation services of such vehicle. (Prior code § 5-1)

8.08.020 Establishment of ambulance service.

Under the authority as expressed in Section 5-1-1, New Mexico Statutes, 1978 Compilation, it is declared that an emergency exists within the City and that the public health, safety and welfare of the inhabitants of the City require the establishment and maintenance of ambulance service within and for the citizens of the City, and in the area surrounding the City. (Prior code § 5-2)

8.08.030 General authority of City Manager.

The City Manager shall provide ambulance service in the manner set forth in this chapter. (Prior code § 5-3)

8.08.040 Service equipment—City Manager to supervise and direct service.

The ambulance service equipment held by the City shall be utilized as an ambulance service for such persons requesting or utilizing such service, which shall be subject to the further provisions of this chapter. Such ambulance service shall be under the immediate supervision and direction of the City Manager, and such equipment shall be maintained at locations under the direction of the City Manager. (Prior code § 5-4)

8.08.050 Rates and charges.

Any person who utilizes the ambulance service of the City, whether or not such person, or any member of the immediate family, requests the same, by reason of emergencies then existing, shall pay for the service in the amounts as set forth periodically by the New Mexico Public Regulation Commission in the New Mexico Ambulance Tariff Rates. (Prior code § 5-5)
(Ord. No. 1025, 11-2-2009)

Chapter 8.12 FIREWORKS

8.12.010 Title for citation.

This chapter shall be known and cited as the "Hobbs fireworks ordinance." (Prior code § 10A-1)

[The next page is 305]

8.12.020 Definitions.

As used in this chapter:

"Aerial device" means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include a firework that produces a shower of sparks. Aerial device includes sky rocket and bottle rocket, missile-type rocket, helicopter, aerial spinner, Roman candle, mine and shell.

"City Commission" means the Hobbs City Commission.

"Common fireworks" means any fireworks device suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the United States Consumer Product Safety Commission in Title 16, C.F.R. and that is classified as a Class C explosive by the United States Department of Transportation.

"Display distributor" means any person, firm or corporation selling special fireworks.

"Distributor" means any person, firm or corporation selling fireworks to wholesalers and retailers for resale.

"Fire Chief" means the Chief of the Hobbs Fire Department.

"Firework" means any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks are further classified in the Hobbs fireworks ordinance as permissible fireworks and display fireworks, as defined by the United States Department of Transportation, C.F.R. Title 49, Transportation, Parts 173.88(d) and 173.100(r).

"Ground audible device" means a fireworks device intended to function on the ground that produces an audible effect.

"Hobbs" means the City of Hobbs, New Mexico.

"Manufacturer" means any person, firm or corporation engaged in the manufacture of fireworks.

"Permissible fireworks" means fireworks legal for sale and use in Hobbs under the provisions of the Hobbs fireworks ordinance.

"Retailer" means any person, firm or corporation purchasing fireworks for resale to consumers.

"Special fireworks" means fireworks devices primarily intended for commercial displays which are designed to produce visible or audible effects by combustion, deflagration or detonation including salutes containing more than one hundred thirty (130) milligrams (two (2) grains) of explosive composition, aerial shells containing more than forty (40) grams of chemical composition exclusive of lift charge and other exhibition display items that exceed the limits contained in the Hobbs fireworks ordinance for common fireworks.

"Specialty retailer" means any person, firm or corporation purchasing fireworks for year-round resale in permanent retail stores whose primary business is tourism.

"Wholesaler" means any person, firm or corporation purchasing fireworks for retailers. (Ord. 874 (part), 2001; prior code § 10A-2)

8.12.030 Permit required—Fee and issuance.

A. No person may sell, hold for sale, import, distribute or offer for sale, as specialty retailer or retailer, any fireworks in the City unless such person has first obtained the appropriate permit.

B. The Fire Chief shall enforce the Hobbs fireworks ordinance. All retailers shall be required to purchase a retail fireworks permit for each retail location. Permit applications shall be obtained from the City Clerk and submitted for approval to the office of the Fire Chief. Upon receipt of an approved application, the City Clerk shall issue a permit.

C. An applicant for a permit under the Hobbs fireworks ordinance shall pay to the City Clerk a fee of twenty-five dollars ($25.00) which shall not be refundable or transferable.

D. All permits shall be issued for one (1) year beginning on April 1st of each year. All permits shall be issued within thirty (30) days from the date of receipt of an approved application.

E. Permits issued under the Hobbs fireworks ordinance shall not be restricted in number or limited to any person without cause. (Ord. 874 (part), 2001; prior code § 10A-3)

8.12.040 Unauthorized fireworks—Possession, sale or use unlawful.

No individual, firm, partnership, corporation or association shall possess for retail sale in Hobbs, sell or offer for sale at retail or use or possess any fireworks, including

ground audible devices and aerial devices, other than permissible fireworks. (Ord. 874 (part), 2001; prior code § 10A-4)

8.12.050 Permissible fireworks.

"Permissible fireworks" for sale to the general public, as that term is used in the Hobbs fireworks ordinance, shall be understood to mean common fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Safety and Licensing Act in N.M.S.A., in 1978 Comp., as amended, with the exception of ground audible devices and aerial devices, which are prohibited pursuant to Section 8.12.040 of this chapter. (Prior code § 10A-5)

8.12.060 Retail sales and storage.

A. No fireworks may be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years or to any intoxicated person.

C. At all places where fireworks are stored, sold or displayed, the words "no smoking" shall be posted in letters at least four (4) inches in height. Smoking is prohibited within twenty-five (25) feet of any fireworks stock.

D. No fireworks shall be stored, kept, sold or discharged within fifty (50) feet of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

E. All fireworks permittees shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters Laboratories Inc. rated capacity of at least five (5) pound ABC per five hundred (500) square feet of space used for fireworks sales or storage.

F. A sales clerk who is at least sixteen (16) years of age shall be on duty to serve consumers at the time of purchase or delivery. All fireworks sold and shipped to consumers within Hobbs shall be sold and shipped only by an individual firm partnership or corporation holding the proper State of New Mexico fireworks license or permit.

G. No fireworks shall be discharged within one hundred fifty (150) feet of any fireworks retail sales location.

H. No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.

I. Any fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse which has been coated with a coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, then the entire fuse shall be covered.

J. Fireworks may be sold at retail between June 20th and July 6th of each year and six (6) days preceding and including new year's day and three (3) days preceding and including Chinese new year, the sixteenth of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism. (Ord. 874 (part), 2001; prior code § 10A-6)

8.12.070 Public display requirements.

A. Any public display of fireworks shall require the individual, association, partnership, corporation or organization desiring to have such a display to secure a written permit from the office of the Fire Chief. The fireworks for such display shall be purchased from a distributor or display distributor licensed by the State Fire Marshal and the Bureau of Alcohol, Tobacco and Firearms at the United States Department of the Treasury.

B. The Fire Chief may adopt reasonable rules and regulations for the use of special fireworks in public displays. (Prior code § 10A-7)

8.12.080 Violation—Penalty—Criminal.

Any individual, firm, partnership or corporation that violates any provision of the Hobbs fireworks ordinance shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. (Prior code § 10A-8)

8.12.090 Violations—Penalty—Civil.

A. If a person is found guilty of violating any of the provisions of the Hobbs fireworks ordinance, that person's permit may be revoked or suspended by the Fire Chief, his or her deputies or designee.

B. No individual, firm, corporation or partnership shall possess any fireworks for sale within Hobbs, other than those authorized in the Hobbs fireworks ordinance. The Fire Chief, his or her deputies or designee may at reasonable hours enter and inspect the permittee's premises to determine compliance with the Hobbs fireworks ordinance. If any retailer has in his or her possession any fireworks in violation of that act, his or her permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his or her possession any fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found. (Prior code § 10A-9)

Chapter 8.16 GARBAGE COLLECTION AND DISPOSAL*

8.16.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Bulky goods" means discarded large items of solid waste, such as appliances, furniture and other similar waste materials (but not including large auto parts) with weights and volumes greater than those allowed in waste collection polycarts.

"Collection" means the process of collecting solid waste for transportation.

"Commercial user" means any person generating solid waste from other than a single-family residence.

"Commercially generated solid waste" means all solid waste, except that generated by single-family residences.

"Disposal facility" means the sanitary landfill or other acceptable methods of solid waste disposal.

"Incinerate" means to reduce combustible solid wastes to inert residue in a device or chamber designed to achieve complete combustion.

***Note—**Prior history: Prior code §§ 11-1, 11-2 and 11-14—11-32 as amended by Ord. 876.

"Premises" means business houses, apartment houses, offices, theaters, hotels, residences, cafes, eating houses, tourist camps, settlements, hospitals, rooming houses, schools, vacant lots and all other places within the City limits where solid waste accumulates.

"Recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed or composted and returned to use in the form of raw materials or products.

"Sanitation Officer" means the head of the Sanitation Department of the City, or his or her duly authorized representatives.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities.

"Unlawful scavenging" means the removal of solid waste from a disposal facility. (Ord. 952 (part), 2006)

8.16.020 Sanitation system created.

Under the authority as expressed in Sections 3-48-1 through 3-48-7, New Mexico Statutes, 1978 Compilation, it is declared that the public health, safety and welfare of the inhabitants of the City require the creation, establishment, maintenance and enforcement of a general system of sanitation in regard to the collection and disposal of refuse within and for the City. (Ord. 952 (part), 2006)

8.16.030 City to provide suitable equipment and adequate disposal areas—Methods of providing service.

The City shall cause to be provided and maintained suitable equipment sufficient to collect and dispose of solid waste within the City and shall provide adequate areas for the disposal of solid waste. To achieve such purposes, the City Commission may:

A. Provide for the collection and disposal of solid waste by the City;

B. Enter into a contract with any person authorized to do business within the State for the collection of solid waste, or the disposal thereof; or

C. Provide for the collection and disposal of solid waste in any other manner deemed suitable by the municipality. (Ord. 952 (part), 2006)

8.16.040 Duties of Sanitation Officer.

It shall be the duty of the Sanitation Officer to supervise the handling, collection and disposal of all solid waste within and for the City. He or she shall have authority to enforce such regulations as the City Commission may adopt from time to time in regard to the method, frequency and time of solid waste collection and shall be charged with the enforcement of the provisions of this chapter. In the event the City enters into a contract with an independent contractor for the collection or disposal of solid waste, the Sanitation Officer shall be authorized to supervise the compliance with such contract by the independent contractor. (Ord. 952 (part), 2006)

8.16.050 Accumulations on premises between collections—Deposits on streets and sidewalks to be in authorized containers.

A. No person shall allow any solid waste to accumulate upon premises owned, leased or occupied by him or her during intervals between collections thereof, except in the manner provided by this chapter.

B. It is unlawful to deposit any solid waste in or upon the streets, alleys, sidewalks, gutters, storm sewers or parkways within the City, except in the receptacles or containers as hereinafter specified. (Ord. 952 (part), 2006)

8.16.060 Containers generally.

A. Required Types. Every person owning, leasing or occupying premises within the City shall utilize on his or her premises mechanically transported containers, to include ninety (90) gallon polycarts provided by the City or its contractual agent, in a sufficient number to contain all solid waste accumulated by such person between collection periods:

B. Specifications and Maintenance Generally.

1. Mechanically Transported Containers. Mechanically transported containers shall be in accordance with the specifications approved by the City Manager and must be compatible with collection equipment in use by the City or its duly authorized contractual agent. No such mechanically transported container shall be placed on any premises, or in any street or alley, without prior approval of the City Manager. The Sanitation Officer shall have the authority to designate the location of such containers, taking into consideration, among other things, convenience to collection crews, convenience to the customer and hazardous conditions, such as electrical wires or natural gas

meters. Each owner, occupant, tenant or lessee shall be responsible for maintaining the area around the mechanically transported containers in a clean and sanitary condition, free of weeds, tall grass and solid waste.

2. In the event the City enters into a contract with any person for the collection or disposal of solid waste, it shall be the responsibility of the contractor, or his or her authorized representative, to negotiate and contract for service with each individual commercial user, in reference to cubic yard size of mechanically transported containers and the number of pick-ups per week.

3. If, in the opinion of the Sanitation Officer, unsanitary premises are being maintained, written notice of this fact shall be mailed or delivered to the user. If, within ten (10) days after the mailing or delivery of such written notice, the premises are not being maintained in a sanitary manner, the user shall be deemed guilty of a misdemeanor.

C. Cleanliness—Location. All solid waste receptacles shall be kept in a clean and good condition by the owner or person having the receptacle in use. Such receptacles shall at all times be located in such places as to be readily accessible for removing and emptying the same but shall not be placed within the limits of any street within the City, unless directed by the Sanitation Officer, or be placed anywhere so as to constitute a nuisance or obstruction to vehicular or pedestrian traffic. In cases of disputes or complaints arising from or concerning the place where the receptacle shall be placed while awaiting removal of contents, the Sanitation Officer shall designate the place and his or her decision shall be final.

D. Acceptance of Refuse at Curb. When so designated by the governing body of the City those specified areas will receive for collection refuse or solid waste at the curb immediately adjacent to the person's premises, subject to the following requirements:

1. Persons occupying the premises shall deposit solid waste in a ninety (90) gallon polycart.

2. It is recommended that solid waste be bagged and closed before placement in the polycart.

3. Persons shall not locate polycarts at curbside for collection prior to 6:00 p.m. of the day prior to scheduled pickup by refuse collector and shall remove polycarts from curbside no later than 9:00 p.m. on the day of pickup. (Ord. 952 (part), 2006)

8.16.070 Bulky solid waste.

Solid waste too long or bulky to be placed in the containers required by this chapter, may be, at the option of the person in charge of the premises where such solid waste accumulates, delivered to the convenience center for collection. Waste that is not placed within a mechanically-transported container, including a polycart, will not be collected for disposal by the City Sanitation Department or its duly authorized contractual agent, with the following exception: two (2) bulky items per year will be collected free of charge from each residential account within ten (10) business days of receipt by the contractual agent of a request for such pick up. Additional bulky items may be picked up at an agreed price for such special service. (Ord. 952 (part), 2006)

8.16.080 Maximum time for allowing solid waste to remain on street or other public place adjustment to private premises.

It is unlawful for any person to permit the presence of solid waste or any other rubbish, upon any street, alley or public place and adjacent to the premises or property of such person, for a period longer than twenty-four (24) hours, unless such solid waste is properly containerized in a manner provided in this chapter and intended to be put out for collection and disposal by the City Sanitation Department or its duly authorized contractual agent. (Ord. 952 (part), 2006)

8.16.090 Maximum time for allowing solid waste to remain on private property.

It is unlawful for any person to permit the presence of noncontainerized solid waste or any other rubbish, upon any private property of such person, for a period longer than twenty-four (24) hours, unless such solid waste is intended to be put out for collection and disposal by the City Sanitation Department or its duly authorized contractual agent and stored in a manner provided in this chapter. (Ord. 952 (part), 2006)

8.16.100 Exclusive right of City to provide collection and disposal service—Exceptions.

The City, and its duly authorized agents, servants or employees, shall have the exclusive right to collect solid waste produced or generated from single-family residences within the City or to contract for such collection pursuant to Section 8.16.030 of this chapter, and it is unlawful for any other person to collect such residentially generated solid waste within the City. The City, and its duly authorized

agents, servants or employees, shall also have the exclusive right to collect commercially generated solid waste within the City or to contract for such collection pursuant to Section 8.16.030 of this chapter; provided, that a person is authorized, by use of his or her own employees, to dispose of his or her own commercially generated solid waste. Such materials so collected shall be collected, hauled and transported in a sanitary manner and in a manner which prohibits the spilling or blowing of such materials onto alleys, streets, lots or adjacent areas and shall be deposited at the solid waste disposal area, subject to fees as outlined in this chapter and under the direction of the Sanitation Officer or his or her duly authorized agents or contractors. (Ord. 952 (part), 2006)

8.16.110 Designation and maintenance of solid waste disposal area.

Solid waste collected by the City or other authorized persons shall be deposited at such area designated by the City Commission as the solid waste disposal area. The solid waste disposal area shall be maintained in such a manner as not to become a public nuisance, and in all cases the solid waste disposal area shall be maintained in accordance with the duly adopted regulations of the State Environmental Improvement Board. (Ord. 952 (part), 2006)

8.16.120 Sanitation Officer to prescribe manner of disposal.

Solid waste shall be disposed of in the manner prescribed by the Sanitation Officer. (Ord. 952 (part), 2006)

8.16.130 Waste deposited on solid waste disposal area to be property of City—Scavenging, removing waste or grazing animals.

All solid waste deposited upon the solid waste disposal area shall be the property of the City or its duly-authorized agent. It is unlawful for any person to:

A. Scavenge;

B. Separate, collect, recycle or carry off any solid waste in the solid waste disposal area, without the special permission of the Sanitation Officer;

C. Graze animals upon the area designated as the solid waste disposal area. (Ord. 952 (part), 2006)

8.16.140 Disturbing or scattering waste or contents of receptacles.

It is unlawful for any person to disturb or scatter the solid waste or contents of solid waste receptacles. (Ord. 952 (part), 2006)

8.16.150 Frequency of collection—Collection and disposal fee schedule.

A. Collection Frequency. Solid waste from all users of the City's solid waste collection and disposal service shall be collected and disposed of twice each week, except as otherwise provided in this section.

B. Residential Collection Fees Shall be Determined by the City Commission by Resolution. The City may establish from time to time by resolution a Low-Income Residential Utility Assistance Program which may include solid waste collection services along with other City utility services.

C. Other Collection Fees.

1. For commercial businesses or other nonresidential establishments or premises, the container size and number of pick-ups per week shall be agreed upon by the City or its duly authorized contractor and the user in accordance with the existing commercial rate schedule established by resolution or contract. Collection must occur in a minimum of one (1) time per week.

2. For commercial business or other nonresidential establishments or where mechanically transported containers are used to serve two (2) or more establishments or dwellings, the service and rental fees shall be prorated between or among the establishments or dwellings.

3. For commercial businesses that generate small amounts of solid waste a polycart(s) shall be provided with one (1) time per week service at a commercial handload rate for each polycart provided. Any commercial business generating more than one and one-half (1.5) cubic of solid waste weekly shall utilize a commercial dumpster unless otherwise authorized by the Sanitation Officer.

D. Residential-Commercial Rates. Commercial establishments which contain, on the premises and connected to the commercial establishment, a residence in which the owner or operator of the business maintains his or her residence shall be assessed a commercial rate only; however, if the residence located on the commercial establishment is occupied by persons other than the owner or operator of the business, the rate of such premises shall be both the commercial and residential rate as established by this section.

E. Fee Revision. All fees as set forth in this chapter may be revised by resolution duly adopted by the City Commission. (Ord. 952 (part), 2006)

8.16.160 Fees compulsory—Exceptions.

A. Every person owning or controlling real property within the City serviced by water and/or sewer utilities shall pay the applicable solid waste collection and disposal fees established and provided for by this chapter.

B. Upon written request to the City Manager, the City Utilities Board, upon good cause shown, may except a real property from paying the applicable solid waste collection and disposal fees provided the person owning or controlling the real property is a nonprofit entity and there is minimal or no solid waste generated from the usage of the real property. A denial of an exception by the Utilities Board may be appealed to the City Commission by filing a written notice with the City Clerk within fifteen (15) days of the denial. Any exception granted hereunder may be terminated by the City Manager or his or her designee at any time that the subject property is an unsanitary premises pursuant to Section 8.36.060 of the Hobbs Municipal Code. (Ord. 955, 2006: Ord. 952 (part), 2006)

8.16.170 Billing and collection of charges.

For the purpose of convenience, the billing and collecting of the charges levied by this chapter shall be done by the Utility Department of the City and all such charges shall be payable at the office of the Water Department in the same manner as other utility services are billed and collected by the Water Department. Utilization of stationary compactor and containers and drop off container bodies (roll offs) shall be billed by the contractual agent. (Ord. 952 (part), 2006)

8.16.180 Assessments against property for failure to use solid waste collection service and failure to place property container—Generally.

A. The City may remove or cause to be removed solid waste from real property and make a charge against real property specially benefited by the removal of solid waste, if:

1. Any person owning or controlling real property allows solid waste to be deposited upon his or her property other than in the proper receptacle and fails to remove the refuse or to place the refuse within the property receptacle within forty-eight (48) hours after the solid waste is deposited on the real property;

2. The person controlling real property refuses to use the solid waste collection service provided by the City.

B. The City may make an assessment against any real property if any person owning or controlling such real property fails or refuses to pay:

1. The charge imposed for collection and disposal of solid waste; or
2. The charge made against real property specially benefited by removal of solid waste. (Ord. 952 (part), 2006)

8.16.190 Assessment roll—Notice of hearing.

A. To collect the assessment authorized in Section 8.16.180 of this chapter, the City Commission shall have prepared an assessment roll. The assessment roll shall list in columns:

1. The name of the owner, if known, of the parcel of real estate being assessed;
2. A description of the parcel of real estate being assessed;
3. The amount assessed against each parcel of real estate;
4. A description in general terms of the removal and what was removed from the real estate being assessed.

B. The City Clerk shall publish a notice containing the assessment roll and stating the time and place that the City Commission will hear appeals or protests by any person aggrieved by the assessment. The notice shall be published once, not less than ten (10) nor more than twenty (20) days before the day of the protest hearing. If the address of the owner of the real property is known, a copy of the notice shall be mailed by certified mail, return receipt requested, to the known address of the owner of the real property being assessed. (Ord. 952 (part), 2006)

8.16.200 Protest hearing—Actions by City Commission on protests—Finality of confirmed proceedings and assessments.

A. At the protest hearing authorized in Section 8.16.190 of this chapter, any interested person may protest to the City Commission the:

1. Regularity of the proceedings;
2. Amount assessed against the real estate;
3. Correctness of the amount of the assessment.

B. The City Commission shall then:

1. Determine the regularity of the proceedings;

2. Correct any errors found in the assessment;
3. By resolution, confirm the proceedings and the assessments. The proceedings and the assessments so confirmed shall be deemed to be the final determination as to the regularity, validity and correctness of the assessments. (Ord. 952 (part), 2006)

8.16.210 Delinquent assessments and penalty.

On or before October 1st of each year, the City Clerk shall certify to the City Commission a list containing any delinquent assessments with a penalty added for nonpayment of the assessments at a rate of one (1) percent per month of any assessment confirmed by resolution as provided in Section 8.16.200 of this chapter and describe the parcel of real estate to which the assessment is applicable. After the certified list is accepted by the City Commission, the assessments shall be processed as provided and in accordance with the law of the State in such cases made and provided. (Ord. 952 (part), 2006)

Chapter 8.20 NOISE

8.20.010 Generally.

It is unlawful for any person to make, continue or cause to be made or continued, within the limits of the City, any disturbing, excessive or offensive noise which causes discomfort or annoyance to any person of reasonably normal sensitivity. (Ord. 840 (part), 1997: prior code § 19-53.1(A))

8.20.020 Determination of unlawful noise.

The characteristics and conditions which should be considered in determining whether a violation of the provisions of this chapter exists should include, but not be limited to, the following:

A. The level of the noise;

B. Whether the nature of the noise is usual or unusual;

C. Whether the origin of the noise is natural or unnatural;

D. The level of the ambient noise;

E. The proximity of the noise to sleeping facilities;

F. The nature of the area from which the noise emanates and the area where it is received;

G. The time of day or night the noise occurs;

H. The duration of the noise; or

I. Whether the noise is recurrent, intermittent or constant. (Ord. 840 (part), 1997: prior code § 19-53.1(B))

8.20.030 Disturbing, excessive, offensive noises—Declaration of certain.

The following activities, among others, are declared to cause disturbing, excessive or offensive noises in violation of this chapter.

A. Horns and Signaling Devices. Unnecessary use or operation of horns, signaling devices or other similar devices, on automobiles, motorcycles, or any other vehicle is a violation of this chapter.

B. Radios, Television Sets, Phonographs, Loud Speaking Amplifiers and Similar Devices.

1. The use or operation of any sound production or reproduction device, radio receiving set, musical instrument, drums, bells, phonograph, television set, loud speakers and sound amplifier or other similar machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet or comfort of any person of reasonably normal sensitivity in any area of the City is a violation of this chapter. This provision shall not apply to sporadic instances of loud speaking amplifiers used in paging business personnel from time to time nor any participant in a licensed parade, church bells, emergency vehicles, or to any person who has been otherwise duly authorized by the City to engage in such conduct.

2. The operation of any such sound production or reproduction device, radio receiving set, musical instrument, drums, bells, phonograph, television set, loud speakers and sound amplifier or other similar machine or device between the hours of 9:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, vehicle or other noise source in which it is located; or the operation of any sound amplifier, which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player or other similar machine or device when operated in such a manner as to be plainly audible at a distance of fifty (50) feet and when operated in

such a manner as to cause a person to be aware of vibration accompanying the sound at a distance of fifty (50) feet from the source shall constitute evidence of a prima facie violation of this chapter.

C. Animals. The keeping or maintenance, or permitting to be kept or maintained upon any premises owned, occupied or controlled by any person, of any animal or animals which by any frequent or long-continued noise causes annoyance or discomfort to a person of reasonably normal sensitivity in the vicinity shall be a violation of this chapter if the noise from any such animal or animals disturbs two (2) or more residents residing in separate residences in close proximity to the property on which the subject animal or animals are kept or maintained.

D. Hospitals, Schools, Libraries, Rest Homes, or Mental Care Facilities. To make noise adjacent to a hospital, school, library, rest home or long-term medical or mental care facility is a violation of this chapter if such noise unreasonably interferes with the workings of such institutions and such noise disturbs or unduly annoys occupants in such institutions.

E. Motor Vehicles and Motorcycles on Public Rights-of-Way. No person shall operate, or cause to be operated, a motor vehicle or motorcycle on a public right-of-way at any time when noise from the engine and/or exhaust system is plainly audible at a distance of fifty (50) feet. The following are exempt from the operation of this subsection:

1. Emergency vehicles;
2. Any motor vehicles engaged in a professional or amateur sanctioned competitive sports event for which an admission or entry fee is charged, or practice or time trials for such event;
3. Any motor vehicle engaged in a manufacturer's engineering, design or equipment test; or
4. Construction or agricultural equipment either on the job site or traveling on highways.

F. Permissible Time for Construction Activity—Operation of Domestic Power Tools.

1. To do, perform or engage in any construction work of any nature which creates a noise that disturbs the peace, quiet or comfort of any person of reasonably normal sensitivity in the City between the hours of 9:00 p.m. and 7:00 a.m. is a violation of this chapter.

2. To operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snow blower or similar device used outdoors in residential areas which creates a noise that disturbs the peace, quiet or comfort of any person of reasonably normal sensitivity in the City between the hours of 9:00 p.m. and 7:00 seven a.m., is a violation of this chapter.

G. Street Sales. To shout or make outcry, use any drum, loudspeaker or other instrument or device which creates a noise that disturbs the peace, quiet or comfort of any person of reasonably normal sensitivity in the City for the purpose of attracting attention to any sale or display of merchandise is a violation of this chapter. (Ord. 840 (part), 1997: prior code § 19-53.1(C))

8.20.040 Emergencies—Emergency work.

The provisions of this chapter shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work. (Ord. 840 (part), 1997: prior code § 19-53.1(D))

8.20.050 Variances.

A. The City Commission shall have the authority to grant special variances which may be requested by a written application when it finds or determines that:

1. Strict conformance with the provisions of this chapter would cause a hardship upon any person;

2. The offending noise will be for a short duration and compliance with this chapter will be impractical;

3. The benefit to the community of the activity creating the offending noise is greater than the adverse effect on the community of the noise created; or

4. The applicant needs additional time to modify equipment or take other action in order to comply with the provisions of this chapter.

B. Notice of an application for a variance granted under this chapter shall be published in the same manner as provided for notice of ordinances in Section 3-17-3, NMSA 1978, as amended, and shall be granted only after the matter is considered in a hearing at a regularly scheduled or special commission meeting.

C. The City Manager may grant a temporary permit to an applicant for a variance to exceed levels established in this chapter until action is taken by the Commission on the application for a variance.

D. Special variances shall be granted in the form of a resolution containing all necessary conditions. Special variances shall include a time limit on the permitted activity and the distances regarding noise levels as specifically set forth in Subsection 8.20.030 B.2. shall be limited to an increase from fifty (50) feet to one-hundred fifty (150) feet. Any event requiring a variance in excess of the levels as set forth in this subsection herein shall require City Commission approval. The City Commission may grant such reasonable requests including all special conditions. The special variance shall not become effective until all conditions set by the Commission are agreed to by the applicant. Noncompliance with any condition of a special variance shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special variance was granted. Application for an extension of the time limits specified in special variances or for modification of other substantial conditions shall be treated the same as applications for initial variances. (Ord. 840 (part), 1997: prior code § 19-53.1(E))
(Ord. No. 1022, 10-19-2009)

8.20.060 Violations—Penalties.

Any person found guilty of violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

A. Upon a first conviction the penalty assessment shall be seventy-five dollars ($75.00).

B. Upon a second conviction the penalty assessment shall be one hundred dollars ($100.00).

C. Upon a third and subsequent conviction by a fine of not less than one hundred fifty dollars ($150.00) or not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment.

D. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment

established for either the first or second conviction. (Ord. 840 (part), 1997: prior code § 19-53.1(F))
(Ord. No. 1031, 3-1-2010)

8.20.070 Injunction—Additional remedy.

The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter which causes a threat to the health and welfare of persons within the City shall be deemed, and is declared to be, a public nuisance and may be subject to summary abatement by a restraining order or injunction issued by a court of competent jurisdiction. This is not intended to preclude resort to any other legal remedy that may be had according to law. (Ord. 840 (part), 1997: prior code § 19-53.1(G))

Chapter 8.24 NUISANCES GENERALLY*

8.24.010 Resolution finding building or premises menace to public comfort, health, peace or safety—Generally.

Whenever any building or structure is ruined, damaged or dilapidated or any premises are covered with weeds, trash, ruins, rubbish, wreckage or debris, the City

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***Editor's note—**Ord. No. 1014, adopted May 4, 2009, amended Ch. 8.24, in its entirety, to read as herein set out in §§ 8.24.010—8.24.080. Prior to inclusion of said ordinance, Ch. 8.24 pertained to similar subject matter. See also the Code Comparative Table.

Cross reference—Nuisance abatement and problem property forfeiture, Ch. 8.48.

Commission may, by resolution, find that the ruined, damaged and dilapidated building, structure or premises is a menace to the public comfort, health, peace or safety and require the remediation of the building or structure, or the removal from the City of the building, structure, weeds, trash, ruins, rubbish, wreckage or debris. For the purposes of this ordinance, the terms remediation and remediated mean the act or acts necessary to bring a ruin, damaged or dilapidated structure or building into compliance with all applicable local, state, national and international building standards as adopted by the City of Hobbs.
(Ord. No. 1014, 5-4-2009)

8.24.020 Resolution copy—Service and posting.

A copy of the resolution adopted pursuant to Section 8.24.010 shall be served on the owner, occupant or agent in charge of the building, structure or premises. If the owner, as shown by the real estate records of the County Clerk, occupant or agent in charge of the building, structure or premises cannot be served within the City, a copy of the resolution shall be posted on the building, structure or premises, and a copy shall be published one (1) time in a local newspaper.
(Ord. No. 1014, 5-4-2009)

8.24.030 Time permitted for remediation or removal of building and debris or filing of written objection.

A. Within ten (10) days of the receipt or of the posting and publishing of a copy of the resolution adopted pursuant to this chapter, the owner, occupant or agent in charge of the building, structure or premises shall commence remediation or removal of the building, structure, weeds, trash, ruins, rubbish, wreckage or debris or file a written objection with the City Clerk asking for a hearing before the City Commission.

B. Any building or structure that is ruined, damaged or dilapidated shall be completely remediated or removed from the premises within thirty (30) days from the receipt of or the posting and publishing of a copy of the resolution adopted pursuant to this chapter, unless a written notice is filed with the City Code Enforcement Superintendent asking for a time extension of no more than sixty (60) days thereafter. At the discretion of the City Code Enforcement Superintendent, an extension may not be granted in the event one-third (1/3) of the remediation or removal has not occurred within the initial thirty (30) days). If such extension is granted, then the remediation or removal must be accomplished within a total time not to exceed ninety (90) days.
(Ord. No. 1014, 5-4-2009)

8.24.040 Hearing.

If a written objection is filed as provided in Section 8.24.030, the City Commission shall:

A. Fix a date for a hearing on its resolution and the objection;

B. Consider all evidence for and against the remediation or removal resolution at the hearing;

C. Determine if its resolution should be enforced or rescinded.

(Ord. No. 1014, 5-4-2009)

8.24.050 Appeal to district court.

Any person aggrieved by the determination of the City Commission made pursuant to Section 8.24.040 may appeal to the district court by:

A. Giving notice of appeal to the City Commission within five (5) days after the determination made by the City Commission; and

B. Filing a petition in the district court within twenty (20) days after the determination made by the City Commission.

The district court shall hear the matter de novo and enter a judgment in accordance with its findings.

(Ord. No. 1014, 5-4-2009)

8.24.060 Failure of owner, occupant or agent to remove building and debris removal by City—Lien.

If the owner, occupant or agent in charge of the building, structure or premises fails to commence remediating or removing the building, structure, weeds, trash, ruins, wreckage or debris:

A. Within ten (10) days of being served a copy of the resolution adopted pursuant to this chapter or of the posting and publishing of such resolution; or

B. Within five (5) days of the determination by the City Commission that the resolution shall be enforced; or

C. After the district court enters judgment sustaining the determination of the City Commission; the City may remediate or remove the building, structure, weeds, trash, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the remediation or removal of such

building, structure, weeds, trash, ruins, rubbish, wreckage or debris shall constitute a lien against the lot or parcel of land from which it was remediated or removed. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-6 of the New Mexico Statutes, 1978 Compilation.

(Ord. No. 1014, 5-4-2009)

8.24.070 Payment for removal by granting legal title to salvageable materials to person removing.

With the consent of the owner, the City may pay for the cost of removal of any condemned building, structure, weeds, trash, ruins, rubbish, wreckage or debris, by granting to the person removing such materials the legal title to all salvageable materials, in lieu of all other compensation.

(Ord. No. 1014, 5-4-2009)

8.24.080 Person moving building and debris to leave premises in clean condition.

A. Any person removing any condemned building, structure, weeds, trash, ruins, rubbish, wreckage or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction, and with all excavations filled.

B. Any person removing a dilapidated building or structure that has been notified of possible condemnation or has been condemned shall first obtain a building permit for demolition from the Building Inspection Department and pay the required fees. All building materials, weeds, etc. shall be removed and cleaned as stated in Subsection A of this section. If the premises are not cleaned or cleared, then the City will take the necessary steps to clean the premises as stated in Section 8.24.060.

(Ord. No. 1014, 5-4-2009)

Chapter 8.28 SMOKING IN MUNICIPAL BUILDINGS

8.28.010 Short title.

This chapter may be cited as the "Clean Indoor Air Act relating to municipal buildings ordinance." (Ord. 811 (part), 1993: prior code § 12-17)

8.28.020 Legislative findings.

A. The Commission finds that tobacco smoke is a major contributor to indoor air pollution; that breathing secondhand smoke is a cause of disease, including lung cancer in healthy nonsmokers; and that separation of people and tobacco smoke within the same air space may reduce, but does not eliminate, exposure to environmental tobacco smoke.

B. The Commission further finds that the risk of disease from environmental tobacco smoke is related to the level of exposure over time; and that merely reducing smoke in buildings owned, operated or leased by the City does not eliminate the health risk to City employees nor to guests and visitors to municipal offices and municipal meeting rooms.

C. The Commission recognizes the right of employees to work in a smoke-free environment as well as the rights of visitors and guests to do business and meet in a smoke-free environment in buildings owned, operated or leased by the City. The Commission is convinced that smoking represents a serious health and safety hazard, not only to the smoker but to the nonsmoker, in any enclosed area regardless of designation of certain areas as smoking or nonsmoking. It is the finding of the Commission that all indoor areas of buildings owned, operated, or leased by the City are working areas and, as such, should be a smoke-free environment. (Ord. 811 (part), 1993: prior code § 12-18)

8.28.030 Purpose.

The purpose of this chapter is:

A. To recognize public health as a priority:

B. To protect public health and safety by regulating the burning of tobacco in all buildings owned, operated or leased by the City. (Ord. 811 (part), 1993: prior code § 12-19)

8.28.040 Smoking in City-owned, City-operated and City-leased buildings.

A. Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "City-owned building" means the interior area of any building owned, operated or leased by the City including, but not limited to, hallway, lounge, restroom and entryway airlock areas, in which City employees occupy all or any portion of the building.

2. "Smoke" or "smoking" means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

B. Smoking Prohibited. It is unlawful for any person to smoke in any City-owned building at any time.

C. No Smoking Signs. On all entrances to City-owned buildings, or in a position where the sign is clearly visible upon entry into a City-owned building, the City shall conspicuously post a sign using the words "no smoking" or the international no smoking symbol, or both. (Ord. 811 (part), 1993: prior code § 12-20(A)—(C))

8.28.050 Violation—Penalty.

Any person found guilty of violating the provisions of this chapter shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment. (Ord. 811 (part), 1993: prior code § 12-20(D))

8.28.060 Enforcement.

Law enforcement personnel are authorized to issue citations in lieu of filing complaints. (Ord. 811 (part), 1993: prior code § 12-20(E))

Chapter 8.32 FIRE CODE

8.32.010 International Fire Code—Adopted.

A. There is adopted by the City Commission, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, that certain code and those certain standards known as the International Fire Code, 2009 Edition, published by the International Fire Code Institute, along with the following appendix chapters:

1. Appendix B, Fire-flow requirements for buildings;
2. Appendix C, Fire hydrant locations and distribution;
3. Appendix D, Fire apparatus access roads or as determined by authority having jurisdiction.

B. The International Fire Code mentioned in subsection A of this section, including the enumerated appendices, is adopted, saved and except such portions as are deleted, modified or amended by this chapter. One (1) copy is filed in both the office of the City Clerk and the City Fire Prevention Bureau, and the same is adopted and incorporated as fully as set out at length herein, and the provisions thereof shall be controlling within the City.

C. All references to Electrical, Mechanical and Plumbing in the International Fire Code are deleted and the blended codes as adopted by the New Mexico Building Code are referenced in this Fire Code. (Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 991, 6-16-2008; Ord. No. 1054, 4-16-2012)

8.32.020 Establishment and duties of fire prevention services.

A. The Fire Code, as adopted in Section 8.32.010 and as amended in this chapter, shall be enforced by the Bureau of Fire Prevention in the Fire Department of the City, which is established and which shall be operated under the supervision of the Chief of the Fire Department.

B. The Chief of the Fire Department may detail such members of the Fire Department and Code Enforcement officers as shall from time to time be necessary to administer this code.

C. The Fire Marshal is directed and empowered to enforce such rules and regulations necessary to carry out the duties of his or her office and more specifically to issue orders in conjunction with the Building Official in accordance with and as substantially embodied in the applicable provisions of the International Building Code, 2009 Edition, as adopted in Chapter 15.04 of this code, and all additions, amendments and changes as may occur therein. (Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 1054, 4-16-2012)

8.32.030 Definitions.

As used in this chapter:

"Building Official" means the designated authority charged with the administration and enforcement of the International Building Code.

"Fire Marshal" means the officer or the designated authority charged with the administration of the fire prevention bureau; "Fire Marshal" is interchangeable with "fire code official" in this chapter.

"Jurisdiction" means all property within the corporate limits of the City of Hobbs, New Mexico and that property within the extraterritorial zone. (Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 1054, 4-16-2012)

8.32.040 Establishment of limits—Districts in which storage of flammable or combustible liquids in outside aboveground tanks prohibited.

The limits referred to in Sections 3404.2.9.6.1 and 3406.2.4.4 of the International Fire Code, in which the storage of flammable or combustible liquids is restricted, is established as City limits, subject to any exceptions as may be established by those rules and regulations promulgated by the Chief of the Fire Department. (Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 1054, 4-16-2012)

8.32.050 Establishment of limits—Districts in which storage of liquefied petroleum gases prohibited.

The limits referred to in Section 3804.2 of the International Fire Code, in which storage and use of liquefied petroleum gas is restricted, are established as City limits. The aggregate capacity of any one (1) installation shall not exceed a two thousand (2,000) gallon water capacity in residential areas. Exceptions are where approved by the Fire Marshal in a multi-container location such as a dispensing station and bulk facilities. (Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 1054, 4-16-2012)

8.32.060 Reserved.

Editor's note—Ord. No. 1054, adopted Apr. 16, 2012, deleted § 8.32.060 which pertained to establishment of limits—Districts in which storage of flammable cryogenic fluids in stationary containers prohibited and derived from Ord. 923 §§ 1, 2 (part), 2004.

8.32.070 Amendments.

The International Fire Code is amended as set forth in this section. When an existing section number of the International Fire Code is referred to in the following section, the text in this section shall control. When a new section or subsection is referred to in the following section it shall be added to the International Fire Code, as adopted. The International Fire Code is amended and changed as follows:

Chapter 1 Administration.

Section 101.1 Title shall be amended to read as follows:

These regulations shall be known as the Fire Code of the City of Hobbs, hereinafter also referred to as "this code."

Section 104.6 Official records shall be amended to read as follows:

The fire code official shall keep official records as required by Sections 104.6 through 104.6.4. Such records shall be retained in accordance with the record retention requirements established by the City of Hobbs and State of New Mexico.

104.10.2 Section added with following language: Fire prevention personnel and police authority.

A. Members of the fire prevention service shall have the powers of police officer in performing their duties under this code when:

   1. Such members of the fire prevention services have been certified by a law enforcement academy authorized by the State of New Mexico and;

   2. Such members have been commissioned as peace officers in the State of New Mexico;

B. Members of the fire prevention service who meet the requirement stated in paragraphs (1) and (2) of subpart A of the section shall have the following powers:

   1. Powers of arrest for criminal matters;

   2. Authority to carry such weapons and utilizes such equipment necessary in the discharging of their duties pursuant to this code;

   3. Authority to investigate arson and related crimes if so appointed and authorized;

C. All other members of the fire preventions services who do not meet the requirements of subpart A of this section shall have the power to issue citations only for violations of the International Fire Code, and have the authority to investigate arson and related crimes.

Section 105.7 Required construction permits shall be amended to read as follows:

The fire code official is authorized to issue construction permits for work as set forth in Sections 105.7 through 105.7.14. Such permits shall be processed

through the City of Hobbs Fire Prevention Bureau and shall be in conformance with the requirements established by this code and the Building Inspection Division.

105.7.1.1 Section added with following language: Automatic fire-extinguishing systems. Hydraulic calculations shall be provided for modification to an existing automatic fire-extinguishing system requiring the installation of additional heads when either of the following occurs:

1. Number of heads being added exceeds 10.
2. Number of heads being added is greater than 10 percent of total heads for the system

The fire code official may require hydraulic calculations be submitted for and modification to and existing system with deemed necessary to adequately evaluate the impact on the system.

105.7.1.2 Section added with following language: Automatic fire-extinguishing systems. Hydraulic calculations shall be provided with a 10 psi safety margin on all commercial buildings requiring an automatic fire-extinguishing system.

The fire code official shall have the authority to reduce the safety margin where deemed adequate.

Section 108.1 Board of appeals established shall be amended to read as follows:

Whenever the chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, applicant may appeal from the decision to City Manager by writing to the Chief of the Fire Department requesting an appeal within 30 days of the aggrieved action.

Section 108.2 Limitations on authority shall be deleted in its entirety.

Section 108.3 Qualifications shall be deleted in its entirety.

Section 109.3 Violation penalties shall be deleted in its entirety; refer to section 8.32.080 of the Hobbs Municipal Code.

Section 111.4 Failure to comply shall be amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this code and shall be subject to the penalties as set forth in Section 109.3.

Chapter 4 Emergency Planning and Preparedness

Table 405.2 Fire and evacuation drill frequency and participation shall be amended as follows:

Group H occupancies shall be included with Group A occupancies in the table.

Chapter 9 Fire Protection Features

Section 902.1 Definitions shall have the definition of Standpipe System, Classes as amended to read as follows:

Standpipe classes are as follows:

Class I system. A system providing 2.5-inch (64 mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.

Class II system. A system providing 1.5-inch (38 mm) hose stations to supply water for use primarily by the building occupants or by the fire department during initial response. 1.5-inch hoses & hose cabinets shall not be provided, unless required by the Fire Code Official.

Class III system. A system providing 1.5-inch (38 mm) hose stations to supply water for use by building occupants and 2.5-inch (64 mm) hose connections to supply a larger volume of water for use by fire departments and those trained in handling heavy fire streams. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Chapter 34 Flammable and Combustible Liquids

Section 3406.3 Well drilling operations shall be in accordance with Chapter 8.44 of the Hobbs Municipal Code.
(Ord. 923 §§ 1, 2 (part), 2004)
(Ord. No. 991, 6-16-2008; Ord. No. 1054, 4-16-2012)

8.32.080 Violations—Penalties.

A. Any person who violates any of the provisions of the Fire Code, as adopted and amended in this chapter [8.32], who fails to comply with the Fire Code, who violates or fails to comply with any order made under the Fire Code, who builds in violation of any order made under the Fire Code, who builds in violation of any detailed statement of specifications or plans submitted and approved under the Fire Code or any certificate or permit issued under the Fire Code and from which no

appeal has been taken, or who fails to comply with such an order as affirmed or modified by this chapter or by a court of competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

B. The application of the penalty in subsection A of this section shall not be held to prevent the enforced removal of prohibited conditions. (Ord. 923 §§ 1, 2 (part), 2004)

8.32.090 Permits and fee schedule.

A fee of twenty-five dollars ($25.00) shall be paid to the City of Hobbs for any permit required by this chapter or as required by the City of Hobbs Fire Department pursuant to its administrative regulations, unless a special permit fee is applicable. The fees for a special permit shall be as required by subsection D of this section.

A. Definitions. As used in this section:

"Automatic fire sprinkler system" means a system that has a water supply, piping, valves, and sprinklers, and is designed to automatically detect and control an unwelcome fire in a building.

"Chemical automatic fire extinguishing system" means a system that uses a gaseous, liquid, or powder form of extinguishing agent, other than water or a water-foam mixture, to control an unwelcome fire. Such systems include at least a supply of the chemical agent, means to distribute the agent, and a fire detection system.

"Device" means a component of a fire alarm system that initiates a signal or that provides notification of a signal. Device also includes a component that transmits a signal or a fire alarm control panel.

"Fire alarm control panel" means a component of a fire alarm system that receives initiating signals and sends notification signals.

"Fire alarm system" means a system of components and circuits arranged to receive notification of a fire by automatic or manual means and arranged to initiate an appropriate warning signal.

"Sprinkler" means a device that is a part of an automatic fire sprinkler system, and is intended to spray suppression water into a fire environment.

B. Special Permit Requirement.

1. A special permit from the City of Hobbs Fire Department is required for the installation or modification of any automatic fire sprinkler system, chemical automatic fire extinguishing system, and fire alarm systems as defined in subsection A of this section.

2. Exception: A special permit shall not be required for the installation or modification of a fire alarm system in a single-family dwelling or in a two-family dwelling.

C. Application. Application for special permits shall be made on forms provided by the City of Hobbs Fire Department and shall include such plans and attached information as required. No work on the system requiring the special permit shall be done until the permit is issued by the Fire Department.

D. Special Permit Fees. Fees shall be paid to the City of Hobbs for any special permit required. Fees shall be paid at the time of application for a special permit.

1. The fee for special permit for an automatic fire sprinkler system shall be as follows:

a. For installation of systems or modifications to existing systems involving twenty (20) or fewer sprinklers, the fee shall be thirty dollars ($30.00).

b. For installation of systems or modifications to existing systems involving twenty-one (21) to fifty (50) sprinklers the fee shall be fifty dollars ($50.00).

c. For installation of systems or modifications to existing systems involving fifty-one (51) to one hundred (100) sprinklers the fee shall be one hundred dollars ($100.00).

d. For installation of systems or modifications to existing systems involving more than one hundred (100) sprinklers the fee shall be one hundred-fifty dollars ($150.00).

2. The fee for a special permit for a fire alarm system shall be as follows:

a. For installation of systems or modifications to existing systems involving no more than ten (10) devices, the fee shall be thirty dollars ($30.00).

b. For installation of systems or modifications to existing systems involving eleven (11) to thirty (30) devices, the fee shall be fifty dollars ($50.00).

c. For installation of systems or modifications to existing systems involving more than thirty (30) devices, the fee shall be one hundred dollars ($100.00).

3. The fee for a special permit for a chemical automatic fire extinguishing system shall be as follows: for installation of systems or modifications to existing systems the fee shall be thirty dollars ($30.00).

E. Issuance. Applications for special permits shall be reviewed by the City of Hobbs Fire Department, and if in compliance with the applicable codes and regulations, the special permit shall be issued.

F. Validity of Permit. The issuance of a permit or approval of plans shall not be construed to be a permit for, or an approval of, any violations of the provisions of the International Fire Code or any other ordinance of the City. The issuance of a permit shall not prevent the Fire Department from thereafter requiring the correction of errors in plans.

G. Suspension or Revocation. The Fire Chief or the Fire Marshal may, in writing, suspend or revoke a special permit that has been issued in error, or issued on the basis of incorrect information supplied, or is otherwise in violation of any ordinance.

H. Stop Orders. When any work is being done or a condition is being established contrary to the provisions of a special permit, the Fire Chief or the Fire Marshal may order the work stopped by notice in writing served on any

persons engaged in doing or causing the work to be done. Such work shall stop until continuation is authorized in writing by the Fire Chief or the Fire Marshal.

I. Expiration. Any special permit issued by the City of Hobbs Fire Department shall expire by limitation, and become null and void if the work authorized is not commenced within one hundred eighty (180) days from the issuance of the special permit, or if the work authorized is suspended or abandoned for a period of one hundred eighty (180) days any time after the work is commenced. For review of a permit after expiration, the applicant must submit a new application and pay a new fee.

J. Re-inspection Fee for Permits. A fee of twenty-five dollars ($25.00) shall be paid to the City of Hobbs for any re-inspection on permitted work.

K. Posting of Permits. Any required special permit shall be conspicuously posted on the premises, and shall not be removed, except by the City of Hobbs Fire Department. (Ord. 923 §§ 1, 2 (part), 2004)

Chapter 8.36 UNSANITARY PREMISES AND UNLAWFUL DUMPING AND BURNING

8.36.010 Refuse defined.

"Refuse" means any article or substance:

1. Which is commonly discarded as waste; or
2. Which, if discarded on the ground, will create or contribute to an unsanitary or unsightly condition.

"Refuse" includes, but is not limited to, the following items or classes of items: Waste food; waste paper and paper products; cans, bottles or other containers; junked household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish. (Prior code § 19-65)

8.36.020 Refuse—Unlawful disposal.

No person in the City shall commit unlawful disposal of refuse. "Unlawful disposal of refuse" consists of discarding refuse:

A. On public property in any manner other than by placing the refuse in a receptacle provided for that purpose, or otherwise in accordance with lawful direction; or

B. On private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant thereof. (Prior code § 19-66)

8.36.030 Throwing waste materials on property within the City limits.

A. It shall be unlawful for any person to sweep, place, deposit or throw solid waste or any waste materials, including but not limited to paper, styrofoam objects, plastic objects, shopping bags, trash sacks, furniture, appliances, or any other type of trash, rubbish, or offensive matter, upon any sidewalk, street, alley, or other property, whether occupied or vacant, within the City limits.

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than three (3) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses. (Ord. 898, 2002; prior code § 11-3)

8.36.040 Placing injurious materials in streets.

It is unlawful for any person to throw or deposit any glass, bottles, nails, tacks, hoops, wire, cans or any other substance or material upon any street or alley in the City, which will cause or which is likely to cause injury to any person, animal or vehicle traveling upon such street or alley or which will cause such street or alley to be unsightly, unattractive, hurtful, nauseous, offensive or dangerous; provided, that the placing of such substance or material in the streets or alleys for the purpose of removal or salvage as is provided by law shall not be deemed an offense under this section. (Prior code § 11-4)

8.36.050 Allowing water to flow from premises onto streets.

It is unlawful for the owner or occupant of any business or residential property within the corporate limits to cause or permit water or other liquid substances, other than rainwater, melted snow or other melted natural ice, to flow, spray or otherwise move from the premises of such owner or occupant upon or over any street or alley within the City. (Prior code § 11-5)

8.36.060 Unsanitary premises.

It is unlawful for any person to permit or cause to remain in or about his or her premises any solid waste, weeds, automobiles not in operating condition, waste water or any conglomeration or residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents, and which, in the opinion of the Sanitation Officer, is unsanitary or injurious to public health. The accumulation of building materials, pipes, lumber or boxes may be maintained on such premises, if such accumulation is evenly piled and stacked for a reasonable length of time to be determined by the Sanitation Officer. (Prior code § 11-6)

8.36.070 Hazardous accumulations.

It is unlawful for any person to permit in or about his or her premises weeds, briars, brush or any other solid waste to become in any way hazardous or injurious to public health, or to obstruct pedestrian and vehicular traffic. (Prior code § 11-7)

8.36.080 Burning—Generally.

A. Definitions:

"Household waste" means any waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunk-houses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas; "Vegetative Material" means plant material including:

1. Grass, grass clippings, leaves, conifer needles, bushes, shrubs, trees, and clippings from bushes, shrubs and trees, resulting from maintenance of yards or other private or public lands.
2. Wood waste, clean lumber, wood and wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings, which have not been painted, pigment-stained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

B. It is unlawful to burn any household waste within the City limits of Hobbs.

C. With approval of City Fire Chief or designee, open burning of vegetative material is allowed provided the following criteria are met:

1. Burning shall be conducted at least three hundred (300) feet from any occupied dwelling, workplace, or place where people congregate;

2. Burning shall begin no earlier than one (1) hour after sunrise and shall be extinguished no later than one (1) hour before sunset;
3. Burning shall be attended at all times;
4. For burns exceeding one (1) acre per day or one hundred (100) cubic feet of pile volume per day, the burner shall provide prior notice of the date and location of the burn to all households within one-quarter (1/4) of a mile of the burn;
5. Auxiliary fuel or incendiary devices may be used to ignite the burning allowed by this section provided that:
   (a) No oil heavier than number two (2) diesel shall be used; and
   (b) No more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used;
6. Material to be burned shall be as dry as practicable;
7. The burner shall consider alternatives to burning prior to igniting a burn; and
8. The Hobbs Fire Chief or designee approves of the weather conditions and compliance of the proposed burn. (Ord. 921, 2003: prior code § 11-8)

8.36.090 Burning certain fuels in operation of businesses.

It is unlawful for any person, in the operation of any business, to burn or permit to be burned any oil, gas, coal or other fuel within the City, in such manner and volume as to bring into contact with the person or property of the inhabitants of the City any offensive gases, fumes, soot, particles or sprays of oil. (Prior code § 11-9)

8.36.100 Nuisances declared—Certain dumping on public property.

The dumping or depositing of dirt, rock, caliche, refuse or other material upon any street, alley, park or other public way or property, at such points and in such quantity that it will be necessary to remove the same, is declared to be a nuisance and may be abated as provided in Section 8.36.120. (Prior code § 11-10)

8.36.110 Nuisances declared—Dumping on certain private property.

The dumping or depositing of dirt, rock, caliche, refuse or other material upon any private property constituting and serving as a natural pondage area into which the rainfall of a substantial part of the City flows is declared to be a nuisance and may be abated as provided in Section 8.36.120. (Prior code § 11-11)

8.36.120 Abatement.

Where the owner, lessee or occupant, or person having charge or control of any occupied or unoccupied lot or tract of land, is a nonresident of the City or cannot be determined or compliance in its entirety with the provisions set forth in the notice has not occurred within a reasonable time after notice, the City Manager may cause removal of any solid waste, refuse, weeds, automobiles not in operating condition, waste water or any conglomeration or residue thereof to be removed, preventing any harborage for insects and rodents and preventing any of the above from becoming in any way hazardous or injurious to public health or an obstruction to pedestrian and vehicular traffic weeds from becoming windblown or creating a fire or traffic hazard. The reasonable cost of abatement of all violations of this chapter plus any other penalties or costs allowed by law in connection therewith shall constitute a lien against the lot or parcel of land. The lien shall be foreclosed in the manner provided by law.

In addition to the above paragraph, any violation of Sections 8.36.100 or 8.36.110 shall be summarily abated by the City. Such means of abating any such nuisance shall not be an exclusive remedy, and the City may, and shall if necessary, cause such nuisance to be abated by any other remedy provided by law. (Prior code § 11-12)
(Ord. No. 1001, 10-6-2008)

8.36.130 Permit for dumping on public property.

It is unlawful for any person within the City to dump or deposit, or cause to be dumped or deposited, upon any street, alley, park or other way or property dedicated to or used by the general public as a road or highway, any dirt, rock, caliche, refuse or other material, without first obtaining a written permit therefor from the City Manager or his or her authorized agent. (Prior code § 11-13)

Chapter 8.40 WEED CONTROL

8.40.010 Short title.

This chapter shall be known and cited as the "Hobbs Weed Ordinance." (Prior code § 12-6)

8.40.020 Purpose.

This chapter is intended to promote the general health, safety and welfare of the people of the City by prohibiting the maintenance or accumulation of those plants

determined to provide harborage for insects and rodents, or which constitute a fire hazard, whether wind collected or not, or which otherwise present a hazard or nuisance to inhabitants of the City. Further, this chapter is intended to promote the growth of native and other grasses and plants whose root structures tend to aid in stabilizing the soil and to reduce dust. (Prior code § 12-7)

8.40.030 Definitions.

For the purposes of this chapter, the following words and their derivatives shall have the meanings given herein:

When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, and words used in the singular include the plural number.

The word "shall" is always mandatory and not merely directory.

"City" means the City of Hobbs, New Mexico.

"City Manager" means the City Manager of the City or his or her designee.

"Person" includes one (1) or more persons of either sex, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

"Repeat Offender" is a property owner or agent of the owner, resident or tenant who has received more than two (2) warnings or citations for the subject property within a calendar year.

"Weeds" means all rank, noxious, poisonous, harmful, unhealthful vegetation, deleterious to health, and shall include, but is not limited to, the following named plants:

1. Pigweed (Amaranthus retroflexus).
2. Russian thistle (Salsola pestifer).
3. Ragweed (Ambrosia spp.).
4. Lambsquarter (Kenopodium spp.).
5. Kochia.
6. Prickly lettuce (Latuca sativa).
7. London Rocket mustard (Sisymbriun irio).
8. Canadian thistle (Cirsuim arvense).

9. Johnson grass (Sorghum halepense).

"Weeds" shall not be construed to mean such vegetation occurring on undisturbed tracts of land or vacant lots, which shall be considered "climax vegetation" for the ecological zone in which the City is located. Such climax vegetation shall consist primarily of natural grasses, mesquite and/or shinery oak.

The City Manager is authorized and delegated the authority and duty to determine if any other plants, due to their unhealthy or dangerous attributes or consequences, should be placed on the list of weeds as defined herein, and shall put such plants on such list if, after a hearing based on the evidence before him or her, it appears that such plants do come within the meaning of the term "weeds" as hereinbefore set out. (Prior code § 12-8)
(Ord. No. 1002, 10-6-2008)

8.40.040 Growth or accumulation—Occupied or unoccupied lots or tracts.

It is unlawful for any owner, lessee or occupant having charge or control of any occupied or unoccupied lot or tract of land within the City to permit or maintain any growth of weeds to a greater height than twelve (12) inches, or any accumulation of weeds, on any such lot or tract of land, including any curb, gutter and sidewalks and the area located between the property line and the middle of the alley adjacent to any such lot or tract of land. (Prior code § 12-9)

8.40.050 Growth or accumulation—Large unimproved lots.

It is unlawful for any owner or lessee having charge or control of those vacant parcels of land, platted yet unimproved, consisting of two (2) or more contiguous lots or parcels exceeding one-half (1/2) acre in size, to permit or maintain any growth of weeds to a greater height than twenty (20) inches. (Prior code § 12-10)

8.40.060 Growth or accumulations—Duty of owner, lessee or occupant.

It shall be the duty of any owner, lessee, occupant or person in charge of or in control of any occupied or unoccupied lot or tract of land to cut the weeds and remove the cuttings or any accumulation of weeds as often as is necessary in order to comply with the provisions set out in Section 8.40.040 or 8.40.050. (Prior code § 12-11)

8.40.070 Notice to owner or lessee.

If the provisions of Sections 8.40.040, 8.40.050 or 8.40.060 are not complied with, the City Manager or his or her authorized representative shall notify the owner

and, lessee or occupant, or any person having charge or control of any occupied or unoccupied lot or tract of land, of the non-compliance with the provisions of this chapter by the issuance of a ten-day written warning. In the event such owner and lessee or occupant, or any person having charge or control of such lot or tract of land, cannot be determined or the owner shall be a nonresident of the City, such notice may be served by posting a copy of the written notice upon the premises, with a copy mailed to the last known address of the owner. A citation will be issued for all violations remaining after the expiration of the warning period. Repeat offenders will no longer be issued a warning but will be issued a citation for all additional violations of this chapter. (Prior code § 12-12)
(Ord. No. 1002, 10-6-2008)

8.40.080 Removal of weeds by City—Lien.

In those cases where the owner, lessee or occupant, or person having charge of control of any occupied or unoccupied lot or tract of land, is a nonresident of the City or cannot be determined, and compliance in its entirety with the provisions set forth in the notice has not occurred within ten (10) days, the City Manager may cause such weeds to be cut. Lots or tracts of land having been either tractor or manually push-mowed shall have all weeds exceeding the applicable ordinance height shredded in the mowing process. Any weeds that are not sufficiently shredded during the mowing process will be removed, preventing any harborage for insects and rodents and preventing any of the weeds from becoming windblown or creating a fire or traffic hazard. If the owner, lessee or occupant, or a person having charge or control of any such lot or tract of land, is notified in writing as provided and fails to comply with the provisions of this chapter in its entirety within ten (10) days, the City Manager may cause such weeds to be cut and/or the cuttings or any accumulation of weeds removed. In any event, should it appear to be a matter of public necessity for health or safety reasons, the City Manager may give notice that the weeds must be cut or removed immediately, in which event, should there be noncompliance, the City Manager is authorized to cause such weeds to be cut and/or the cuttings or any accumulation of weeds removed immediately. The actual cost of the cutting or removal of weeds, plus any other penalties or costs allowed by law in connection therewith, under any of the circumstances herein set out, shall be billed to the owner of record, who shall have fifteen (15) days to submit payment in full. Failure to remit shall cause a lien to be placed upon the property from which such weeds were removed in the manner prescribed by law. (Prior code § 12-13)

8.40.090 Approved methods of weed control.

The approved methods of controlling weeds shall be mowing, cutting, digging, chemical treatment or other methods designed to remove the weeds but not disturb

other vegetation or unnecessarily disturb the soil. The scraping and tillage of lots and tracts of land is prohibited, unless permission of the City Manager is first obtained; except, that scraping and tillage as part of normal construction activities or as ground preparation for agriculture or landscaping activities shall be allowed. The City Manager may allow scraping and tillage of lots or tracts of land when this will not detract from or violate the clear intent and purpose of this chapter. (Prior code § 12-14)

8.40.100 Administration and enforcement.

The City Manager or his or her designated representative shall be the Administrative Authority for this chapter. The Administrative Authority shall establish rules and regulations for the fair and equitable administration and enforcement of this chapter and for the receiving and hearing of protests concerning the application of this chapter and the levying of the charges provided for herein. (Prior code § 12-15)

8.40.110 Violation—Penalty.

Any person who shall fail and neglect to cut the weeds and remove the cuttings or any accumulation of weeds as provided in this chapter, or who shall fail, neglect or refuse to comply with the provisions of any section of this chapter or of any notice herein provided for, or who shall violate any of the provisions of this chapter whatsoever, or who shall resist or obstruct the City Manager or his or her authorized representatives in the cutting of weeds or the removal of cuttings or the removal of the accumulation of the weeds shall, upon conviction thereof, be subject to a fine not to exceed fifty dollars ($50.00), and each day on which such violation continues may constitute a separate offense. (Prior code § 12-16)

Chapter 8.44 OIL AND GAS ACTIVITIES

Article I. In General

8.44.010 Definitions.

Technical or oil and gas industry words or phrases used in this chapter and specifically defined shall have the meanings customarily attributable thereto by

prudent operators in the oil and gas industry. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

"API Standards" means American Petroleum Institute standards.

"Building" means a commercial, institutional, industrial or residential building on a lot, tract, or parcel that is intended for human occupancy.

"City" refers to the City of Hobbs, New Mexico.

"Commission" refers to the City Commission of the City of Hobbs.

"Drill site" means all of the land area used in the drilling or other related operations, specifically including, but not limited to, rig locations, portable or permanent structures, steel tanks, storage of pipe or other material, and the parking or maneuvering of vehicles, except roadways used for ingress or egress to the drill site.

"Existing well" means a well with a valid well drilling permit identified in this chapter located within the jurisdiction of this chapter as well as wells drilled prior to the adoption of this chapter.

"I.F.C." refers to the International Fire Code.

"Injection line" refers to any line that transports oil, gas or water from a gathering facility to a well that injects these constituents for the purposes of re-pressurization, down hole disposal, down hole storage or is used for secondary recovery of oil and gas.

"Inspector" means the person or entity retained by the City to monitor the activity at the well sites.

"O.C.D." refers to the Oil Conservation Division of New Mexico.

"Permittee" means the person to whom is issued a permit for the drilling, operating and producing of a well under this section, and his or her heirs, legal representatives, successors and assigns.

"Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind.

"Production equipment" means any apparatus utilized for the extraction or processing of oil and gas on a well site including, but not limited to separators,

dehydrators, meter houses, well heads, tanks, valves, compressors, pumping units, injection units, and cathodic protection devices unless another more to specific meaning has been given to any of these terms.

"Production line" refers to any line pipe, which transfers oil, brine water or gas to/from the well and processing equipment.

"Property owner" means real property surface record owner(s).

"Right-of-way" is expressly limited to all public rights-of-way or streets or other public property within the City of Hobbs.

"Street" means any street, highway, sidewalk, alley, avenue, recessed parking area, or other public right-of-way, including the entire right-of-way.

"Vessel" means a hollow receptacle used as a container for produced well fluids.

"Well" means any hole or holes, bore or bores, to any sand, horizon, formation, strata or depth, for the purpose of producing any oil, gas, liquid hydrocarbon or brine water or for use as an injection well for secondary recovery, or any of them.

When the title of any City official is used herein such title includes any duly authorized representative of such official. (Ord. 974 (part), 2008)

8.44.020 Penalties.

A. It is unlawful and an offense for any person to violate or fail to comply with any provision of this chapter, irrespective of whether or not the verbiage of each section hereof contains the specific language that such violation or failure to comply. Any person who shall violate any of the provisions of this chapter, or any of the provisions of a permit issued pursuant hereto, or who shall fail to comply with the terms hereof, shall be guilty of a misdemeanor and shall, on conviction thereof, be punished in accordance with Hobbs Municipal Code, Chapter 1.16. A separate offense shall be deemed committed on each day during or on which a violation of this chapter occurs or continues to occur.

B. The City shall have the right to enforce the provisions of this chapter through both its civil and criminal jurisdiction in both the Municipal Court of the City of Hobbs or the District Court of the State of New Mexico. In the event of a violation of this chapter, the appropriate authorities of the City, in addition to other available remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent, enjoin or remedy such violation. (Ord. 974 (part), 2008)

8.44.030 Applicability of Federal and State laws—Conflict.

A. Any violation of the laws of the State or any rules, regulations, or requirements of any State or Federal regulatory body having jurisdiction in reference to drilling, completing, equipping and operating therein or in reference to firewalls, fire protection, blowout protection, safety protection, or convenience of persons or property shall also be a violation of this chapter and shall be punishable in accordance with Hobbs Municipal Code, Chapter 1.16.

B. In cases where conflicts may arise between the provisions of this chapter and any other codes, rules or regulations, the code, rule or regulation which imposes the greater restriction shall control. (Ord. 974 (part), 2008)

Article II. Permits

8.44.040 Required.

A. It is unlawful and an offense for any person acting either for himself or herself or acting as agent, employee, independent contractor or servant for any person to knowingly drill any well within the corporate limits of the City and jurisdiction of this chapter without a well drilling permit.

B. When a permit has been issued for the drilling of a well, such permit shall constitute sufficient authority for drilling, operation, production and for the construction and gathering lines and discharge by the permittee and its employees, agent and contractors.

C. No permit shall authorize the drilling of more than one (1) well. (Ord. 974 (part), 2008)

8.44.050 Existing well permit.

A. An existing well permit application must be filed with the City Clerk's office fifteen (15) days prior to the start of any procedure that requires O.C.D. notification and permits. Existing well permit applications shall include:

1. A brief description of the procedure;

2. The completed applicable O.C.D. permit and/or form.

B. All existing well permits will be approved by the Inspector, as long as they meet the conditions in subsections (A)(1) and (A)(2) of this section.

C. Existing wells shall be operated in accordance with the practices of a reasonable and prudent operator. (Ord. 974 (part), 2008)

8.44.060 Application.

A. Every application for a permit to drill a well shall be in writing, signed and notarized by the applicant, or the applicant's agent, or the applicant's representative duly authorized to sign on his or her behalf, and shall be filed with the City Clerk.

B. A separate application shall be required for each well. The application shall include full information, including the following:

1. The date of the application;
2. The name of the applicant;
3. The address of the applicant;
4. Proposed site plan of the well, including proposed location and routing of gathering lines; as well as a diagram of permanent location (footprint) and:
    a. Name of lease owner and surface owner,
    b. Accurate description of the land (legal description and a map or plat), building(s) within three hundred (300) feet for a single well and seven hundred fifty (750) feet with production equipment respectively. Identify distance from Municipal fresh water supply wells and Municipal subsurface fresh water storage reservoirs,
    c. Location with respect to property lines, right-of-way boundaries and drainage grades,
    d. Identify distances from public streets, highways and operating railway;
5. The proposed depth of the well;
6. Detailed explanation of operating pressures of wellhead and all production or injection lines;
7. Location and type of pumping unit, all production equipment such as: fluid storage, gas separator, treating vessels, compressor, compressor control, or safety devices with explanation of operating characteristics of each (if applicable);
8. The name of the person(s) to be notified in an emergency;

9. Details and specifications of the safety provisions and equipment.
    a. Identification of routing of all equipment on streets within the jurisdiction of this chapter;
10. Copy of permit to drill approved by the appropriate State or Federal agency;
11. Names and addresses of all individuals authorized to act on behalf of the applicant;
12. A copy of the Emergency Response Plan;
13. A copy of the Public Notice. (Ord. 974 (part), 2008)

8.44.070 Issuance or refusal to issue.

A. The City Manager or designee, within fifteen (15) days after the filing of the complete application for a permit to drill a well, shall determine whether or not the application complies in all respects with this chapter. If it does, the permit will stand approved. However, if the application does not comply with all requirements, the permit will not stand approved and will continue to be denied until all requirements are met. Each permit shall:

1. By reference have incorporated therein all the sections of this chapter with the same force and effect as if this chapter were copies verbatim in such permit.
2. Specify the location of the proposed well, with particularity to lot number, block number, name of addition or subdivision, section line or other available correct legal description.
3. Contain and specify that the term of the permit shall be for a period of one (1) year from the date of the permit and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operation of such well or facility for which the permit was issued.
4. Contain and specify such other terms and provisions as may be necessary in the particular case to accomplish the purposes of this chapter.
5. Contain and specify that no actual operations shall be commenced until the permittee has complied with the bond and insurance provisions of this chapter.

B. Such permit, in duplicate, shall be signed by the City Manager or designee and prior to delivery to permittee shall be signed by the permittee, with one (1) original to be retained by the City and one (1) by the permittee. When so signed, it

shall constitute the permittee's drilling license, as well as the contractual obligation of the permittee to comply with the terms of such permit, terms and of this chapter. (Ord. 974 (part), 2008)

8.44.080 Suspension/termination of permit.

In the event of failure of permittee to comply with any provision of this chapter, the Inspector shall issue in writing a notice to the permittee of the nature of the noncompliance and stating a reasonable time necessary to gain compliance. After lapse of such reasonable time, if compliance has not been made, the Inspector may suspend the permit for a period of time or recommend cancellation of the permit. (Ord. 974 (part), 2008)

8.44.090 Permit suspension—Hearing and appeals.

No application or permit shall be refused, revoked, or suspended or terminated without due cause having been shown for such refusal, revocation or suspension, and in no event until such notice of such hearing to be held at any regular meeting of the City Commission.

A. Any person or operator aggrieved by a decision of the City Manager or designee arising by virtue of the provisions of this chapter shall have the right to appeal such decision to the City Commission. The decision by the City Commission shall be final. Any appeal from the City Manager or designee shall be filed in writing with the City Clerk within ten (10) calendar days after rendition of such decision of the City Manager or designee. (Ord. 974 (part), 2008)

8.44.100 Modification of permit.

If, after a permit has been issued as provided in Article II, Section 8.44.070 and drilling operations have commenced and the operator finds it necessary to substantially alter the nature of drilling operations, the operator shall file with the Inspector a duplicate copy of the Form C-103 report filed with the New Mexico Oil Conservation Division. (Ord. 974 (part), 2008)

8.44.110 Bond and insurance.

A. Bond Required Amounts.

1. If a permit or certificate of compliance is issued by the City Commission or the Inspector under the terms of this chapter for the drilling of a well, no actual operations shall be commenced unless the permittee shall file with the City Clerk a bond as provided in this section.

2. The bond shall be in the principal sum of such amount as may be determined by the City Commission, but not less than one hundred thousand dollars ($100,000.00). The bond shall be executed by a reliable insurance company authorized to do business in the State, as surety, and the applicant as principal, running to the City for the benefit of the City and all persons concerned, under the condition that the permittee shall comply with the terms and conditions of this chapter in the drilling and operation of the well.

3. Such bond shall become effective on or before the date it is filed with the City Clerk and shall remain in force and effect for at least a period of six (6) months subsequent to the expiration of the term of the permit issued. In addition, the bond will be conditioned that the permittee will promptly pay all legally imposed fines, penalties, and other assessments imposed upon permittee by reason of his or her breach of any of the terms, provisions, and conditions of this chapter and that the permittee will promptly restore the streets and sidewalks and other public property of the City, which may be disturbed or damaged in the operations, to their former condition; that the permittee will promptly clear all premises of all litter, trash, waste and other substances used, allowed or occurring in the operations, and will after abandonment or completion, grade, level and restore such property to the same surface conditions, as nearly as possible, as existed when operations first commenced; and that the permittee will indemnify and hold the City harmless from any and all liability growing out of or attributable to the granting of such permit. If at any time the City Commission shall, after a hearing thereon, deem any permittee's bond to be insufficient for any reason, it may require the permittee to file a new bond.

B. Public Liability Insurance Required Amounts.

1. In addition to the bond required in subsection A of this section, the permittee shall carry a policy of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage, naming the permittee as insured and the City as additional insured, issued by an insurance company authorized to do business in the State. Such policy shall provide a limit of liability of not less than five million dollars ($5,000,000.00) combined single limits per occurrence.

2. The permittee shall file with the City Clerk a certificate of insurance as evidence of coverage. If liability insurance coverage terminates, the permit

shall terminate and the permittee's right to operate under such permit shall cease until the permittee files evidence of reinstatement or replacement coverage.

C. Exceptions to This Subsection.

1. The City Commission may elect to make an exception to the requirements of this subsection when in its opinion, the intent and purpose for the requirements of the bond and insurance can be assured by any of the following means:

   a. Acceptance of a guarantee or indemnity to the City in lieu of a bond.

   b. Acceptance of a blanket bond and single policy of insurance to cover all operations of the permittee within the jurisdiction of this chapter.

   c. Application of bond and insurance requirements acceptable to the City Commission.

D. All insurance and bond requirements shall be issued by an insurance or bond company authorized to do business in New Mexico with an A or better rating. (Ord. 974 (part), 2008)

Article III. Regulations—Standards

8.44.120 Notification.

Each application for the drilling of any new well shall provide notice to the public by the following means:

A. Forty-five (45) days prior to the start of new well drilling operations at least one (1) notice will be published in a newspaper of general circulation in the City of Hobbs that identifies:

   1. Name of operator with contact information to request information.

   2. The physical location of well site: street address and legal description.

   3. The thirty (30) day filing period during which any aggrieved citizen or applicant may file written comments, grievances or request for an appeal of the well drilling permit.

   4. Name and contact information of City personnel with whom to file objection.

B. Forty-five (45) days prior to the start of new well drilling operations, a sign containing the thirty (30) day filing period during which any aggrieved citizen

or applicant may file written comments, grievances or request for an appeal of the well drilling permit shall be placed in the approximate location of the proposed new well drilling operations, of such size and lettering that can be read from the nearest public street or right-of-way. This sign shall include the same information as listed in subsections (A)(1) through (A)(4) of this section. (Ord. 974 (part), 2008)

8.44.130 Streets and alleys.

A. No permittee shall make any excavations for any purpose or construct any pipelines for conveyance of fuel, water or minerals on, under or through the streets or other land of the City without an express right-of-way permit from the City, at a reasonable price to be agreed upon, and then only in strict compliance with this chapter and the specifications established by City Chapter 12.20 (Ditches and pipelines, street and alley right-of-way evacuation and encroachment policy).

B. The digging up, excavating, tunneling, undermining, breaking up or damaging of any street or other land of the City or leaving upon any street or other land of the City any earth or other material or obstruction, shall not be permitted unless such persons shall first have obtained written permission from the City Engineer, and then only in compliance with specifications established by the City Engineer.

C. The permittee shall repair or have repaired all damage to the streets or other land of the City. Such repair shall be done to the standards established by the City Engineer. (Ord. 974 (part), 2008)

8.44.140 Street and alley—Obstructions.

No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets of the City or streets shown by the master plan of the City, and no street shall be blocked or encumbered or closed in any drilling or production operation except by written permission of the Police and Fire Chief or their designees. (Ord. 974 (part), 2008)

8.44.150 Proximity of: a) single wells, b) tanks, vessels, compressors, or c) production and injection flow lines to occupied buildings, public streets, highways and operating railways.

A. No single well (producer or injector) can be drilled, and no permit shall be issued for any well to be drilled at any location nearer than three hundred (300) feet (greater or lesser distance can be established at time of permitting) to any building

located within the jurisdiction of this chapter, unless said building is owned or controlled by the permittee. However, no surface production equipment can be located at this site with the exception of a pumping unit. All other production equipment must follow the conditions of subsection B of this section. Provided, however, that the City Manager may in exceptional cases, in considering any application for permit, may require greater or allow lesser distance depending on the circumstances and so specify in the permit. Any allowances for a lesser distance must be accompanied by written permission approved by all affected property owners. New wells may be drilled and permitted for drilling on existing well locations regardless of the distance to any building, but still must comply with subsection C of this section, as it pertains to public streets and railways.

B. No new installations of production equipment (including but not limited to crude oil, condensate or water storage tanks, separators, compressors or vessels) used in any process of producing crude oil, produced water or natural gas shall be constructed or operated on any site if the perimeter of said site is within seven hundred fifty (750) feet (greater or lesser distance can be established at time of permitting) to any building located within the City limits, unless said building is owned or controlled by the permittee. Fluid storage capacity is limited to one thousand five hundred (1,500) barrels per location. Storage capacity in excess of one thousand five hundred (1,500) barrels per location must be approved in writing by Hobbs Fire Chief, No fluid storage can be located nearer than seventy-five (75) feet to any dedicated public street, highway, or nearest rail of an operating railway. Street distance measures are from the back of the nearest curb or in the absence of a curb, the closest pavement, railroad distance measures will be determined to the nearest rail. Existing sites with said equipment may be updated with new equipment as necessary regardless of distance. Provided, however, that the City Manager may in exceptional cases, in considering any application for permit, require greater or allow lesser distance depending on the circumstances and so specify in the permit. Any allowances for a lesser distance must be accompanied by written permission approved by all affected property owners.

C. In compliance with the I.F.C., as adopted by the City of Hobbs, no permit shall be issued for any well to be drilled at any location nearer than seventy-five (75) feet to any dedicated public street, highway, or nearest rail of any operating railway. Street distance measures are from the back of the nearest curb or in the absence of a curb, the closest pavement, railroad distance measures will be determined to the nearest rail.

D. No new production or injection flow lines shall be placed nearer than fifty (50) feet to any existing building located within the City limits, unless said building is owned or controlled by the permittee. Provided, however, that the City Manager or designee may in exceptional cases, require greater or allow lesser distance depending on the circumstances. All repairs and maintenance will be governed by City Chapter 12.20. Any allowances for a lesser distance must be accompanied by written permission approved by all affected property owners. New wells may be drilled and permitted for drilling on existing well locations regardless of the distance to any building. (Ord. 974 (part), 2008)

8.44.160 Proximity of well, tanks, or pipelines to Municipal fresh water supply.

No well shall be drilled, and no permit shall be issued for any well to be drilled at any location or production equipment to be located nearer than one thousand five hundred (1,500) feet to any Municipal fresh water supply well. All proposed new wells within two thousand five hundred (2,500) feet to one thousand five hundred (1,500) feet must be reviewed by City Engineer prior to a well drilling application being approved. (Ord. 974 (part), 2008)

8.44.170 Proximity of well, tanks, or pipelines to Municipal fresh water subsurface storage facility.

No well shall be drilled, and no permit shall be issued for any well to be drilled at any location or production equipment to be located nearer than one thousand five hundred (1,500) feet to any Municipal fresh water subsurface storage facility. All proposed new wells within two thousand five hundred (2,500) feet to one thousand five hundred (1,500) feet must be reviewed by City Engineer prior to a well drilling application being approved. (Ord. 974 (part), 2008)

8.44.180 Operation and equipment—Penalties and standards.

A. All drilling and operations at any well performed by a permittee under this section shall be conducted in accordance with the practices of a reasonable and prudent operation. Storage and circulation of all drilling fluids shall be confined to steel tanks in a closed loop system. All casing, valves, and blowout preventers, drilling fluid, tubing, wellheads, Christmas trees, and wellhead connections shall be of a type and quality consistent with such practice. Setting and cementing casing

and running drill stem tests shall be performed in a manner and at a time consistent with the practices of a reasonable and prudent operator. Each permittee under this section shall observe and follow the regulations of the O.C.D.

B. An internal combustion engine may be used in the drilling operations of the well, or wells, and if an internal combustion engine is used, that mufflers be installed on all engines so as to reduce noise and comply with the Hobbs Municipal Code Noise Ordinance, Chapter 8.20. Any waiver of said ordinance must be approved by City Commission. All of said installations must be done in accordance with accepted practices for fire prevention purposes. For production purposes, only electric power may be used. Drilling operations must be conducted in such a manner that groundwater will not be adversely affected.

C. Oil drilling and production equipment used shall be so constructed and operated so that noise, dust, odor or other harmful substances or effect will be minimized by the operations carried on at any drilling site or from anything incidental thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe, proven technological improvements in methods of production, shall be adopted as they, from time to time, become available if capable of reducing factors of nuisance or annoyance. There shall be no venting of gas into the open air.

D. Except in cases of emergency or approved variance, no materials, equipment, tools or pipe used for drilling or production operations shall be delivered or removed from the site except between the hours of 7:00 a.m. to 9:00 p.m. on any day. On drill stem tests, only one (1) trip will be allowed at night between 9:00 p.m. and 7:00 a.m. unless an emergency exists.

E. Firefighting apparatus and supplies shall be maintained on the drilling site at all times during drilling and production operations. No refining process or any process for the extraction of products from natural gas shall be carried on at the drill site, except that a dehydrator and separator may be maintained on the drill site for the separation of liquids from natural gas. Any such separator shall serve only one (1) well.

F. The well site shall not be used for the storage of pipe, equipment or materials except during the drilling or servicing of the well and the production facilities allowed on the site.

G. That no refinery, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises at any time. This shall not be deemed to exclude a simple gas separation process.

H. All electric lines to production facilities shall be located in a manner compatible to those already installed in the surrounding area or subdivision. (Ord. 974 (part), 2008)

8.44.190 Cleanliness and sanitation.

A. The premises shall be kept in a clean and sanitary condition. The permittee shall prevent any mud, wastewater, oil, slush, or other waste matters from flowing into the alleys, streets, lots or leases within the jurisdiction of this chapter.

B. All permittees' premises shall be kept clear of high grass, weeds and combustible trash within a radius of one hundred (100) feet around any production equipment or thirty (30) feet past anchors, whichever distance is greater. All waste shall be disposed of in such manner as to comply with the air and water pollution control regulations of the State and all ordinances of the City and removed as required in Hobbs Municipal Code Section 8.36.060 regarding unsanitary premises.

C. An SPCC plan on each facility must be available upon request by City Inspector. (Ord. 974 (part), 2008)

8.44.200 Surface equipment—Pumping units, storage tanks and separators.

A. Completed wells shall be equipped with high-low valves or automatic shut-in equipment to shut in the well in the event of any malfunction downstream from the wellhead.

B. All crude oil, condensate or water storage tanks used, constructed or operated on any permitted site within seven hundred fifty (750) feet of a building location shall be so constructed and maintained as to be vapor tight and properly vented. All crude oil storage tanks must have a vapor recovery unit. A permittee may use, construct and operate a steel conventional separator and such other approved tanks and appurtenances as are necessary for treating oil with each of such facilities, to be so constructed and maintained as to be vapor tight. All fluid storage vessels and confined spaces (injection well enclosures) must be equipped with H2S monitoring equipment that emits an audible and visual alarm when H2S levels exceed acceptable levels. Each oil and gas separator shall be equipped with adequate over pressure relief protection safety devices. All tanks shall be placed above ground, and the tanks shall be placed upon a suitable earth or concrete pad. All equipment is to be constructed and maintained in accordance with API Standards.

C. The use of a central tank battery is permitted, but must comply with the requirements of subsection B above.

D. Unless prohibited by Federal Emergency Management regulations, tanks shall be enclosed within a conventional type fire wall constructed of compacted earth; sufficient water shall be used during the fire wall construction to assure adequate compaction.

E. The firewall enclosing the tanks shall have a minimum capacity equal to one and one-third ($1^1/_3$) times the volume of the tanks enclosed.

F. The top or crown of the fire wall shall have a normal height of three (3) feet above normal ground elevation. The location of the tank site shall be approved by the Inspector. (Ord. 974 (part), 2008)

8.44.210 Fences with locking gates required.

A. After drilling and completion operations have been conducted and prior to marketing the well product or well function:

1. Production and injection sites shall be enclosed on all sides by a minimum eight-foot chainlink fence with double strands of barbed wire or concertina wire across the top. The chainlink fence shall have a minimum of two (2) remotely located gates or exit-ways on the site and the gates shall be kept locked at all times when the permittee or his or her employees are not within the enclosure.

B. The permittee shall place a sign at each entrance to each well location or site that includes the following information as well as any other information required by O.C.D.:

1. The site;
2. The operator;
3. Emergency contact information; and
4. All applicable warnings and dangers. (Ord. 974 (part), 2008)

8.44.220 Minor deviations during actual operations.

The City Manager or his/her designee may authorize minor deviations from the standards of this chapter that appear necessary in light of technical or engineering considerations first discovered during actual development or operations and that are not reasonably anticipated during the initial approval process, as long as they

comply with the spirit and intent of this chapter. Minor deviations shall not include increases in the intensity of use or the introduction of uses not previously approved.
(Ord. 974 (part), 2008)

Chapter 8.48 NUISANCE ABATEMENT AND PROBLEM PROPERTY FORFEITURE*

Article I. In General

8.48.010 Purpose and intent.

The purpose of this chapter is to prevent the use of real property, vehicles and personal property as a public nuisance.
(Ord. No. 984, Art. I(I), 5-5-2008)

8.48.020 Definitions.

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

A. Abate: To bring to a halt, eliminate or, where that is not possible or feasible, to suppress, reduce, and minimize.

B. Building: A structure, hereinafter defined, which is enclosed with walls and a roof so that there are no sides left open.

C. Close, to Close, or Closure: To seize the property and remove all owners, tenants, occupants and other persons and animals from the real property, vehicle, or personal property, or a specified discrete portion thereof, and to lock, board, bar, or otherwise close and prohibit all entry, access, and use of the real property, vehicle, or other personal property, or a specified discrete portion thereof, except such access and use as may be specifically ordered by the Court for purposes of inventory, maintenance, storage, security, and other purposes, and to vest the sole right of possession and control of the

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***Editor's note—**Ord. No. 984, Arts. I—III, adopted May 5, 2008, did not specifically amend the Code; hence, inclusion herein as Ch. 8.48, was at the discretion of the editor. See the Code Comparative Table and Disposition List for a detailed analysis of inclusion.

Cross reference—Nuisances generally, Ch. 8.24.

real property, vehicle, or personal property, or a specified discrete portion thereof, in the City for a limited period of time defined by Court order. In the case of a vehicle, closure includes impoundment.

D. Contraband: Any personal property which is illegal to own.

E. Commission's Designee: The person(s) or entity(ies) appointed by the City Commission to enforce this chapter.

F. Criminal Street Gang: Any ongoing organization, association in fact, or group of three (3) or more persons, whether formally or informally organized, or any sub-group or affiliated group thereof having as one (1) of its primary activities the commission of one (1) or more criminal acts or illegal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, hereinafter defined, for a one-year period.

G. Flight: To flee, escape, or leave the place where the public nuisance activity was committed or conducted.

H. Legal or Equitable Interest or Right of Possession: Every legal or equitable interest, title, estate, tenancy, or right of possession recognized by law and equity, including, but not limited to, freeholds, life estates, future interests, condominium rights, time share rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

I. Parcel: Any lot or other unit of real property or any combination of contiguous lots or units owned by the same person, hereinafter defined.

J. Pattern of Criminal Gang Activity: The commission, attempt to commit, conspiring to commit, or solicitation of two (2) or more predicate gang crimes, provided the criminal acts were committed on separate dates or by two (2) or more persons who are members of, or belong to, the same criminal gang within a one-year period.

K. Person: Natural persons and every legal entity whatsoever, including, but not limited to, sole proprietors, corporations, limited liability companies, partnerships, limited partnership, and associations.

L. Personal Property: All property of every kind and nature whatsoever, including cash, vehicles, animals, intangible property and contraband, but not including real property of any kind.

M. Predicate Gang Crime:

1. A state offense:
   a. Involving a controlled substance (as defined in Section 30-31-2 NMSA 1978, as amended, and/or section of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is imprisonment for not less than five (5) years;
   b. That is a felony crime of violence that has as an element the use or attempted use of physical force against the person of another; or
2. Any federal or state felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense, including:
   a. Assault with a deadly weapon;
   b. Aggravated battery;
   c. Intimidation;
   d. Compelling organizational membership;
   e. Homicide or manslaughter;
   f. Shooting at an occupied dwelling or motor vehicle;
   g. Kidnapping;
   h. Car jacking;
   i. Robbery;
   j. Residential burglary;
   k. Drive-by shooting;
   l. Unlawful use or possession of weapons;
   m. Bribery;
   n. Tampering with or retaliating against a witness, victim, informant, or juror;
   o. Rape;
   p. Torture; or
   q. Arson; or
3. Any federal or state offense involving:
   a. Money laundering;
   b. Felony vandalism;
   c. Unlawful sale of a firearm; or

d. Obstruction of justice.

N. Property: Property of all kind, including real property and personal property, hereinafter defined.

O. Public Nuisance:

1. Any parcel of real property, commercial or residential, any personal property, or any vehicle on or in which any of the following illegal activities occurs, or which is used to commit, conduct, promote, facilitate, or aid the commission of or flight from any of the following activities. For purpose of this chapter, the illegal activity shall have the same definition as that contained in the section of the New Mexico Statutes Annotated (NMSA) 1978 as amended or Hobbs Municipal Code (HMC) (2001) as amended, listed after the illegal activity:

a. Prostitution, Section 30-9-2 (NMSA) Section 9.12.050 (HMC); Patronizing prostitutes, Section 30-9-3 (NMSA) Section 9.12.060 (HMC); Promoting prostitution, Section 30-9-4 (NMSA); or Accepting earnings of a prostitute, Subsection 30-9-4.1 (NMSA); or

b. Sexual exploitation of children by prostitution, Section 30-6A-4 (NMSA); or

c. Sexual exploitation of children, Section 30-6A-3 (NMSA); or

d. Trafficking controlled substances, Section 30-31-20 (NMSA); Distribution of a controlled substance to a minor, Section 30-31-21 (NMSA); Distribution of a controlled or counterfeit substance, Section 30-31-22 (NMSA); Possession of a controlled substance, Section 30-31-23 (NMSA) Section 9.28.020 (HMC); Manufacture, distribution, or possession of an imitation controlled substance, Section 30-31A-4 (NMSA); Sale of an imitation controlled substance to a minor, Section 30-31A-5 (NMSA); or

e. Possession, delivery or manufacture or delivery to a minor of drug paraphernalia, Subsection 30-31-25.1 (NMSA) Section 9.28.010 (HMC); or

f. Commercial gambling, Section 30-19-3 (NMSA); Permitting premises to be used for gambling, Section 30-19-4 (NMSA); Dealing in gambling devises, Section 30-19-5 (NMSA); or

g. Three (3) or more incidents occurring within any one hundred eighty-day period giving rise to convictions of disorderly conduct, Section 30-20-1 (NMSA), and Section 9.12.020 (HMC); or

h. Any criminal activity by a criminal street gang as defined herein; or

i. Sale of alcoholic beverages at any place other than a valid (not suspended or revoked) licensed premises, Section 60-7A-4.1 (NMSA) 5.44.020 (HMC); Manufacture of alcoholic beverages, Section 60-7A-7 (NMSA); or

j. Assault upon a peace officer, Section 30-22-21 (NMSA) Section 9.08.070 (HMC); Aggravated assault upon a peace officer, Section 30-22-22 (NMSA); Assault with intent to commit a violent felony upon a peace officer, Section 30-22-23 (NMSA); Battery upon a peace officer, Section 30-22-24 (NMSA); Aggravated battery upon a peace officer, Section 30-22-25 (NMSA); Assisting in assault upon a peace officer, Section 30-22-26 (NMSA); Disarming a peace officer, Section 30-22-27 (NMSA); or

k. Three (3) or more incidents occurring within any one hundred eighty-day period giving rise to convictions of unreasonable noises, Chapter 8.20 HMC; or

l. Violations of Hobbs Municipal Code defining unsanitary premises and unlawful dumping, Sections 8.36.010 to 8.36.130; or

2. A public nuisance shall include and is further defined as any parcel of real property, commercial or residential, that is the subject of or that has been involved with calls for service to any law enforcement agency(ies) for violations of the statutes and ordinances cited in Subsection 8.48.020(O) defining public nuisance and shall include a repeated pattern of calls for service and complaints of vagrants, suspicious persons, suspicious cars, general calls for welfare checks, disorderly conduct, domestic violence, domestic altercations, domestic disputes, loud parties, loud music, neighborhood complaints, noise ordinance violations, and public drunkenness and shall be subjected to the imposition of penalties for public nuisance as provided by Section 8.48.040 of this chapter.

P. Real Property: Land and all improvements, buildings, and structures, and all estates rights and interests, legal and equitable, in the same, including, but not limited to, all forms of ownership and title, future interests, condominium rights, time share rights, easements, water rights, mineral rights, oil and gas rights, space rights, and air rights.

Q. Receivership: The special receivership on the terms set out in the Receivership Act and as applied in Section 8.48.050(B) below.

R. Resident: One (1) or more people entitled under a rental agreement to occupy all or a portion of a residential building to the exclusion of others and who actually reside at such locations.

S. Resident Removal: The removal of resident(s) from their residential building as a result of an action filed by the City of Hobbs under the authority of Section 8.48.070, or a comparable proceeding authorized by ordinance, statue or common law, to abate a nuisance resulting in the seizure, closure, receivership, sale or destruction of the residential unit.

T. Residential Building: A building or portion thereof designed or used for human habitation.

U. Structure: Anything constructed, erected, or placed upon real property which is so firmly attached to the land as to be reasonably considered part of the real estate, and includes buildings of every type and nature whatsoever.

V. Tenant: Any person who uses, resides in, or occupies property identified as a public nuisance, regardless of whether the tenant has the consent of the owner to use, reside, or occupy the property.

W. Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devises moved exclusively by human power or used exclusively upon stationary rails or tracks.

(Ord. No. 984, Art. I(I), 5-5-2008)

Article II. Criminal Abatement

8.48.030 Public nuisances prohibited.

A. It shall be unlawful for any owner, manager, tenant, lessee, occupant, or other person having any legal or equitable interest or right of possession in any real property, vehicle, or other personal property to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, any public nuisance in, on or using any property in which they hold any legal or equitable interest or right of possession.

B. An owner of property whose own activities on the real property are not a public nuisance shall not be in violation of this chapter if the owner has no knowledge of the public nuisance activity and, upon receiving notice of the activity constituting a nuisance, the owner:

1. Demonstrates to the City that the rental agreement for the property contains a provision prohibiting criminal activity;
2. Delivers to the tenant(s) a written notice of termination of the rental agreement as provided by the New Mexico Owner-Resident Relations Act or the Mobile Home Park Act;
3. Files an appropriate report with law enforcement authorities or otherwise cooperates with such authorities in enforcing laws with respect to tenants on the property;
4. Initiates appropriate legal action to remove residents involved in criminal activity where such activity can be proven; and
5. Takes all reasonable and available steps to terminate the public nuisance activity; and
6. Enters into a written nuisance abatement agreement with the City of Hobbs wherein the property owner agrees to take specific steps including but not limited to providing on-site security or otherwise take action that will abate, terminate or eliminate the public nuisance activity on the property in exchange for the City of Hobbs reserving its rights and agreeing not to initiate any legal action for public nuisance against the property owner during the term of the agreement provided that the property owner complies with the terms and conditions of the written nuisance abatement agreement and the public nuisance is eliminated, abated or terminated.

(Ord. No. 984, Art. II(I), 5-5-2008)

8.48.040 Penalties.

A. Any person who violates any provision of this chapter shall, upon conviction, be subject to a fine not exceeding five hundred dollars ($500.00) or by imprisonment not exceeding ninety (90) days or both. Each separate violation shall constitute a separate offense, and every day on which any violation exists shall constitute a separate violation and offense.

B. Upon conviction of violation of this chapter, the City shall register the violating property with the City Agencies and/or the County Clerk.

C. Conditions of Suspended Sentences: In the event that the Court chooses to suspend any portion of the fine or sentence for a violation of this chapter, the City shall request that the Court make the suspended sentence expressly conditional on the following terms:

1. The defendant must evict, remove, and permanently bar from entering the property any persons who committed the criminal activity forming the basis of the public nuisance, including, but not limited to, the defendant himself, his or her family members and relatives, and owners, tenants, occupants, guests, and other persons. This may be accomplished through forcible entry and detainer actions, sale of the property, new leases of the property, or other legal action as needed; and

2. The defendant must take steps to abate the public nuisance, eliminate its past and continuing adverse effects on the neighborhood, and prevent public nuisances from recurring on the property, including, but not limited to landlord training, tenant background checks and screening, improvements to the property, including general repairs which will bring the property into compliance with City Building Code, Title 15 of this code, and including fencing, lighting, and destruction of buildings, modifications to leases, security guards, removal of trash, junk, and graffiti, and compliance with all other applicable City Codes; and

3. Any other conditions the Court deems appropriate.

(Ord. No. 984, Art. II(II), 5-5-2008)

8.48.050 Posting and publication of public nuisance convictions; additional and alternative remedies.

A. Posting and Publication of Public Nuisance Convictions: Upon the conviction of any person for violating this chapter and after the time for any appeal has expired, in addition to any fine and/or jail sentence, the City may file in the office of the County Clerk a certificate describing the real property and that it has been found to be a public nuisance. The City may also post such notices in prominent places on the real property on which the public nuisance occurred. These notices may be attached to any structure on the real property. The City shall have the right to enter the real property for the purpose of erecting, affixing, maintaining and removing these notices. The City may also publish or release notices describing the property and stating that it has been found to be a public nuisance in or to newspapers, periodicals, magazines, fliers and other print media, and may release such notices

to television, radio and cable media. The notices and releases may contain the property address, the names of the defendants convicted and all persons holding any legal or equitable interest in the property, photographs of the defendants and all persons holding any legal or equitable interest in the property, photographs of the property and the nuisance activity, a narrative description of the nuisance activity involved, a statement that the property constitutes a public nuisance, the court's sentence including any suspended sentence, and the conditions of the same, and may invite the public to contact the City regarding any further nuisance activity or violations of the sentence. The City may post the property and release or publish the notices provided above for a period not to exceed one (1) year from the conviction, or, in the event that the conviction is appealed, one (1) year from the date the conviction is affirmed. The posting and/or publishing will be suspended during the appeal process. It shall be unlawful for any person to interfere with, remove, obliterate, obscure, cover, or destroy any notice posted pursuant to the provisions of this section.

B. Additional and Alternative Remedies: In addition or in the alternative to the criminal fines, sentences, conditions of suspended sentences, posting, publication, media releases and other sanctions provided above, the City may also seek administrative remedies against any licensee including the revocation and/or non-issuance of a City business license and any of the civil remedies provided in this chapter. These remedies shall be cumulative, and the City may pursue one (1) or more of them, simultaneously or in succession.
(Ord. No. 984, Art. II(III), 5-5-2008)

Article III. Civil Abatement

8.48.060 Intent.

A. The abatement of public nuisances for the protection of public health, safety, and welfare is a matter of local concern. The purpose of this article is not to punish, but to abate public nuisances. The actions provided in this article are designed to abate public nuisances by removing the property and vehicles from criminal use and as a base of criminal operations, to ensure that criminal activity and the use of the property for criminal purposes is unprofitable, to require that the profits of criminal activity be disgorged, to make property owners vigilant in preventing public nuisances on, in, or using their property and responsible for the lawful use of their property by tenants, guests and occupants, and to deter public nuisances. The remedies provided in this article are directed at the property involved without regard

to ownership, title or right of possession and the culpability or innocence of those who hold these rights. The remedial actions provided in this section are intended to be civil in nature. The remedies of seizure, temporary restraining order, closure, receivership, sale, and/or destruction are intended to be in rem, against the property itself, and not against any individual directly. However, the remedies of temporary retraining order, civil judgment, and permanent injunction may be partially in personam.

B. In order to ensure that the remedies provided in this article are applied in good faith and for the purposes of public nuisance abatement, the following shall apply:

1. No City employee's or law enforcement officer's employment or level of salary shall depend upon the frequency or quantity of actions and remedies under this chapter that he or she produces.

2. All seizures of real property shall be made pursuant to a temporary restraining order based upon a judicial finding of probable cause and only after an opportunity for an adversarial hearing to contest the seizure has been provided.

C. This article is not intended to authorize any act expressly prohibited by state law, nor to forbid any conduct expressly authorized by state law. The provisions of this article shall be construed to avoid any such direct and express conflict.

D. The sections of this article are intended to provide a comprehensive scheme for civil public nuisance abatement and should be read together.
(Ord. No. 984, Art. III(I), 5-5-2008)

8.48.070 Procedure in general.

A. Remedies Cumulative: The remedies provided in this article are cumulative and supplementary to the criminal penalties provided in Article II of this chapter, the criminal remedies provided by any other criminal ordinance or statue, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The City may pursue the remedies provided in this article, the criminal penalties provided in Article II of this chapter or other ordinances or statutes, other civil actions or remedies, administrative proceedings against a licensee, or any one (1) or more of them, and may do so simultaneously or in succession.

B. Pursue Both Criminal and Civil Remedies: In the event that the City pursues both the criminal penalties in Article II, the criminal remedies provided in any other section, other civil remedies, or the remedies of any administrative action and the remedies in Article III, the civil actions provided in this article shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action under Article III so stipulate.

C. Actions Are Civil and Remedial: All actions under this article are civil and remedial in nature. All seizure, closure, receivership, sale and destruction remedies under this section shall be in rem. Injunctive remedies under this section may be partly in peronsam.

D. Actions Brought by City/District Attorney or Citizen: Actions under this article shall be filed by the City Attorney for the City of Hobbs and/or by the District Attorney for the Fifth Judicial District in the Lea County Fifth Judicial District Court. A private citizen, in the name of the state, may also bring an action under this article.

E. Authority: Actions under Article III shall be in accordance with the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence.

F. Affect on Real Property: Actions under Article III may affect the use, possession, enjoyment, and title to real property. Accordingly, the City may file and record a notice of lis pendens against the real property involved.

G. Action Commenced by Filing: An action under this article shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit and a motion for temporary restraining order in accordance with the New Mexico Rules of Civil Procedure.

H. Possible Defendants Identified: The defendants to an action under this article and the persons liable for the remedies in this section may include the property itself, any persons owning or claiming any legal or equitable interest or right of possession in the property, all tenants and occupants at the property, managers and agents for any person owning or claiming a legal or equitable interest in the property, any persons committing, conducting, promoting, facilitating or aiding the commission of or flight from a public nuisance, and any other persons whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders for temporary restraining orders, seizures,

closures, receiverships, permanent injunctions, liens, sales and/or destruction. Any person holding any legal or equitable interest or right of possession in the property who has not been named as a defendant may intervene.

I. Notification Before Filing Civil Action:

1. At least ten (10) calendar days before filing a civil action under this chapter involving any seizure, closure, or receivership of real property, the City Manager or Commission's Designee shall post a notice at the main entrances to the buildings or at some other prominent place on the real property. The City Manager or Commission's Designee shall also mail a notice by certified mail, return receipt requested, to the owner(s) of the real property and to the holder(s) of the last deed of trust or mortgage recorded on the real property. The mailing of the notice shall be deemed sufficient if mailed to the owner(s) and the holder(s) of the last recorded deed of trust or mortgage at the address(es) shown on the records of the Lea County Clerk and/or the Lea County Assessor's office. The posted and mailed notices shall state that the real property has been identified as a public nuisance and that a civil action under this chapter may be filed.

2. The City Manager or Commission's Designee is authorized to enter upon the property for the purpose of posting notice and to affix the notice in any reasonable manner to any buildings or structures.

3. The City Manager or Commission's Designee shall not be required to post or mail any notice specified in 8.48.070 I.1. whenever he or she determines, in his or her sole discretion, that any of the following conditions exist:

   a. The public nuisance poses a threat to public safety; or

   b. Notice could jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or

   c. Notice could result in sale, transfer, encumbrance or destruction of the property; or

   d. Other emergency circumstances exist; or

   e. The owner(s) and the holder(s) of the last recorded deed of trust or mortgage have been notified, in writing, within the last one hundred twenty (120) days that the property has been identified as a public nuisance and that a civil action under this chapter may be filed.

4. It shall be unlawful for any person other than the City Manager or Commission's Designee to remove any notice posted under the provisions of this paragraph.

(Ord. No. 984, Art. III(II), 5-5-2008)

8.48.080 Temporary restraining orders.

A. Temporary Restraining Orders in General.

1. Intent. Public nuisances are real, direct and immediate threat to the health, safety, and welfare of the people of Hobbs. Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Hobbs and their governmental agencies. Actions at law are not always an adequate remedy, and the protection of public health, safety, and welfare may require the temporary restraining ordered provided in this section. Ex parte temporary restraining orders are necessary to provide rapid relief from public nuisances without the delay which can result from an adversarial hearing and personal service and to prevent persons from removing, concealing, destroying, encumbering, selling or transferring property that may be the subject of the remedies in this chapter. The issuance and execution of temporary restraining orders under Article III of this chapter shall not be deemed a bailment of property. The owner(s) of the property remain responsible for the maintenance and security of property subject to temporary restraining orders and shall be permitted reasonable access to the property for these purposes upon application to the Court.

2. Form of proposed temporary restraining order. Every temporary restraining order proposed by the City under Article III of this chapter shall set forth the reason for its issuance, be reasonably specific in its terms, and describe in reasonable detail the acts and conditions authorized, required or prohibited, and shall be in accordance with the New Mexico Rules of Civil Procedure.

B. Temporary Restraining Orders; Public Nuisances.

1. Seizure of Vehicles and Other Personal Property Not Within Buildings, and Restraining Orders to Persons Concerning Real Property, Vehicles, Other Personal Property and Public Nuisances. The City shall petition the Court to issue a temporary restraining order that makes the following orders for seizure of vehicles and other personal property not contained within build-

ings and restraining persons as to real property, vehicles, other personal property, and public nuisances, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:

a. The City Manager or Commission's Designee or any police officer to seize and close vehicles and other personal property not contained within any building on real property, using any reasonable force necessary, and to place the same in police custody, or to retain the same in police custody if previously seized, in the constructive custody of the Court, until further order of the Court. All towing and storage costs shall be by the owner(s) of the vehicle or other personal property.

b. Persons to deposit with the City Manager or Commission's Designee or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices for accessing the vehicles and other personal property.

c. The City Manager or Commission's Designee or any police officer or sheriff's deputy to post the summons, complaint, and temporary restraining order on the real property to serve copies upon any person who reasonably appears or claims to hold any legal or equitable interest or right of possession in the property.

d. To restrain all persons from removing, concealing, damaging, destroying, or selling, giving away, encumbering or transferring any interest in vehicles, other personal property, fixtures, structures, or real property, or the contents of the same, or using any of the property as security for a bond.

e. Persons holding any legal or equitable interest or right of possession in the real property, vehicle, or other personal property to take steps to abate the public nuisance and prevent it from recurring.

f. The City Manager or Commission's designee or any police officer to take reasonable steps to abate the nuisance activity and prevent if from recurring.

g. To require certain named individuals to stay at least two hundred (200) yards away from the property at all times.

h. Any other orders that may be reasonably necessary to take the property into the Court's constructive custody and to access and safeguard the property.

2. Seizure of Real Property and Vehicles and Other Personal Property Within Buildings. In addition to the orders above, the City shall petition the Court to include in the temporary restraining order the following orders with respect to the seizure of the real property and the contents of the buildings, which orders shall be served and become effective pursuant to the New Mexico Rules of Civil Procedure:

   a. The City Manager or Commission's Designees or any police officer to enter upon, seize, and close the real property, and buildings and structures upon the real property and the contents of the same, using any reasonable force necessary.

   b. Persons holding any legal or equitable interest or right of possession in the real property or personal property to deposit with the City Manager or Commission's Designee or any police officer documents evidencing title, registration and keys, combination numbers, magnetic cards and other devices and information for accessing the real property and any building, structures, vehicles and other personal property contained thereon until further order of the Court.

   c. Persons holding any legal or equitable interest or right of possession in the real property to provide for the maintenance, utilities, insurance and security of the property. The City shall petition the Court to permit these persons reasonable access to perform these duties or, at the discretion of the City Attorney, to permit the City Manager or Commission's Designee to perform these duties in lieu of the owners. If the City Manager or Commission's Designee chooses to perform the duties, the owner(s) shall be responsible for all costs incurred.

   d. Where real property involved contains three (3) or more apartments or other individualized rental units, the City may petition the Court to order in lieu of closure, but in addition to the other orders provided above, that certain named individuals who committed, conducted, promoted, facilitated or aided the commission of a public nuisance be removed from the property, but that other persons lawfully on the premises be permitted to remain, and the property be placed in a special receivership as provided in this section. The City shall request that a receiver appointed ex parte by the Court take possession of the property to the exclusion of the owner(s) and other persons holding any legal or equitable interest and their managers and agents then in possession, collect rents from the tenants, and pay the operating expenses, taxes, utilities, and main-

tenance expense on the property including the cost of abating public nuisances and preventing the same from recurring. The receiver shall not pay the principal or interest on any note, deed of trust, mortgage, installment land contractor similar in tenant, and these obligations shall remain in the real property. The City shall petition the Court to periodically award the receiver reasonable fees for his or her services to be paid out of the rents, profits, and income. The receiver shall account for all income and expenses in accordance with the laws of New Mexico. The City shall petition the Court to order the defendants to pay the fess and expenses of the receiver, utilities, maintenance, security, operating expenses, taxes, insurance and other reasonable expenses related to the property to the extent that the rents, income, and profits of the property are insufficient to defray the same. The receiver appointed ex parte shall not be replaced except upon the stipulation of all parties. The City may petition the Court to make other reasonable orders consistent with these provisions for the administration of this special receivership.

e. Any other orders that may be reasonably necessary to access, maintain, and safeguard the property.

3. Motion to Vacate or Modify Temporary Restraining Order or for Return of Seized Property. Any defendant or any person holding any legal or equitable interest or right of possession in any property seized or restrained under this chapter may file a motion to vacate or modify the temporary restraining order or for return of seized property. Proceedings on these motions shall be in accordance with the New Mexico Rules of Civil Procedure and applicable laws.

(Ord. No. 984, Art. III(III), 5-5-2008)

8.48.090 Remedies for public nuisances.

Where the existence of a public nuisance is established in a civil action under this article, the City shall petition the Court to enter permanent prohibitory and mandatory injunctions requiring the defendants to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property, in the vehicle, or use of the real property, vehicle or other personal property. The permanent prohibitory and mandatory injunction requested by the City may allow the Court to consider other remedies as necessary and provided by law to abate the public nuisance. The City shall also petition the Court to order, as

to any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid the commission of or flight from any public nuisance, the following remedies:

A. Closure of Real Property and Destruction of Certain Structures:

That the real property be closed for a period of not less than one (1) year and not more than three (3) years from the date of the final judgment, plus any extension of that period caused by failure to comply with the conditions for release of the property set out below, and if the City requests, that certain structures upon the real property be destroyed. The City may request the Court to order the defendant to carry out the destruction of the structures. The City shall petition the Court to order the defendant to provide for the maintenance, utilities, insurance, and security of the property during the period of closure, and that at the end of the closure period, the real property be released to the owner only upon:

1. Payment of all expenses incurred by the City for seizure, closure, utilities, security, access, destruction of buildings, maintenance, insurance, and other reasonable expenses; and
2. Payment of all civil judgments under this article; and
3. Execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the City and all of its employees and agents for liability for the seizure, closure and damages to the property.

In the event that the owners and other persons holding any legal and equitable interest an right of possession, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain closed. However, if a year expires without the owner making payment, the property shall then forfeit to the City. The issuance and execution of the closure order shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance and security of property subject to the closure order and shall be permitted reasonable access to the property for these purposes upon application to the court.

B. Receivership of Real Property and Destruction of Certain Structures: That, when the City so requests, in lieu of closure of real property, the real property be placed into a special receivership for a period not less than one (1) year and not more than three (3) years from the date of final judgment, plus any

extension of that period caused by a failure to comply with the conditions for release of the property set out below, and, if the City requests, that certain structures be destroyed. The City may request the Court to order the defendants to carry out the destruction. The City shall petition the Court to order the defendants to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees, and other reasonable expenses related to the property to the extent that the rents, profits and income of the property under receivership is insufficient to defray these expenses, and that at the end of the receivership period, the real property shall be released to the owner only upon:

1. Payment of all expenses incurred by the City for seizure, closure, utilities, security, access, maintenance, insurance, taxes, receivership and receivership fees, the costs of destroying structures, and other reasonable expenses not covered by the rents, profits, and income under receivership; and

2. Payment of all civil judgments under this article; and

3. Execution by all owners and other persons holding any legal or equitable interest or right of possession in the real property of a complete and unconditional release of the City and all of its employees and agents, including the receiver, for any liability for the seizure, closure and receivership and damages to the property.

4. In the event that the owners and other persons holding any legal or equitable interest or right of possession in the real property, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the property shall remain under the receivership or be closed a provided in Paragraph A above. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owners of the property remain responsible for the maintenance and security of the property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the Court. In the event that the income, rents and profits of the receivership, after a complete accounting, exceed the costs and expenses of access, seizure, closure, maintenance, security, taxes, insurance, destruction of structures, the receivership and receivership fees, and all other reasonable expenses related to the property, the City shall petition the Court to order the

receiver to expend the remainder first on specific improvements at the property that will abate public nuisances or prevent them from recurring, and second to pay the civil judgments due in the case.

C. Impoundment of Vehicles. That the vehicle be impounded for a period of not less than six (6) months and not more than one (1) year from the date of the final judgment plus any extension of the period caused by failure to comply with the conditions for release of the vehicle set out below; and that at the end of the closure period, the vehicle shall be released to the owner(s) only upon:

1. Payment of all towing fees, storage fees, and civil judgments under Article III; and

2. Execution by the owners and lienors of a complete and unconditional release of the City and all of its employees and agents for the closure and any and all damages to said vehicle.

In the event that the owners, lienors, or any of them fail, neglect or refuse to pay the fees, expenses, and judgments when due, and execute the release provided above, the vehicle shall be forfeited to the City. The issuance and execution of the closure order shall not be deemed a bailment of property.

D. Destruction of vehicles. Where the City so requests, in lieu of impoundment of the vehicle, that the vehicle be destroyed.

E. Forfeiture of personal property. That the personal property be forfeited to the City.

(Ord. No. 984, Art. III(IV), 5-5-2008)

8.48.100 Judgment for costs and attorneys' fees.

In any case in which a public nuisance is established, in addition to the remedies provided above, the City may petition the Court for a separate civil judgment for the City's costs and attorneys' fees against every person who committed, conducted, promoted, facilitated, or aided in the commission of any public nuisance or who held any legal or equitable interest or right of possession in any real property or vehicle on or in which any public nuisance occurred, or any real property, vehicle or other personal property used to commit, conduct, promote, facilitate or aid the commission of any public nuisance. This civil judgment shall be for the purpose of compensating the City for its costs from pursuing the remedies under this article.
(Ord. No. 984, Art. III(V), 5-5-2008)

8.48.110 Supplementary remedies.

In any action in which probable cause for the existence of a public nuisance is established, in the event that the defendants, or any one (1) of them, fails, neglects or refuses to comply with the court's temporary restraining orders, receiverships, closures, destruction orders, and/or other orders, the City may petition the Court to, in addition to or in the alternative to the remedy of contempt, permit the City to enter upon the real property, vehicle or other personal property and abate the nuisance, take steps to prevent public nuisances from occurring, and/or perform other acts required of the defendants in the Court's temporary restraining orders and/or other orders.
(Ord. No. 984, Art. III(VI), 5-5-2008)

8.48.120 Lien for judgments.

In addition to the remedies provided in this article, the City shall have a lien against the real property, vehicles and other personal property on or in which any public nuisance occurred or which was used to commit, conduct, promote, facilitate, or aid in the commission of any public nuisance for the total of all judgments imposed for costs and attorneys' fees. The City shall record a notice of this lien with the Lea County Clerk.
(Ord. No. 984, Art. III(VII), 5-5-2008)

8.48.130 Stipulated alternative remedies.

A. Voluntary Stipulation: The City and any defendants to an action under this article may voluntarily stipulate to temporary restraining orders, seizures, closures, receiverships, forfeitures, destruction, judgments, liens, and other remedies, temporary or permanent, that are different or altered from the remedies provided in this article, including, but not limited to, the following:

1. Shorter or less stringent temporary restraining orders, closures and receiverships.
2. Receiverships on other terms, including but not limited to terms providing for the payment of secured indebtedness on the subject property, removal or substitution of the receiver, and other terms.
3. Non destruction of buildings, other structures, vehicles and other personal property.
4. Release of seized real property to the party currently entitled to possession, or to an agent, manager, or receiver appointed under the stipulation, after the

public nuisance has been fully abated, steps have been taken to prevent public nuisances from recurring, sufficient action has been taken to deter public nuisances, and the public interest is protected, or a suitable plan to accomplish these goals has been agreed to.

5. Reduction or waiver of civil judgments and liens.

6. Other reasonable stipulations designed to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity, and protect the public interest.

B. Court Order: Any stipulations for alternative remedies shall be made by an order of the Court.

(Ord. No. 984, Art. III(VIII), 5-5-2008)

8.48.140 Other seizures, closures, forfeitures and confiscations.

Nothing in this article shall be construed to limit or forbid the seizure, confiscation, closure, destruction or forfeiture of property now or hereafter required, authorized or permitted by any other provision of law. Nothing in this chapter shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the remedies and procedures provided in this chapter.

(Ord. No. 984, Art. III(IX), 5-5-2008)

Title 9

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Chapter 9.04 OFFENSES BY OR AGAINST PUBLIC OFFICERS AND GOVERNMENT

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It is unlawful for any person to willfully taunt, torment, tease, beat, strike, torture, mutilate, injure, disable, poison or kill any dog used by the Police Department in the performance of the functions or the duties of such department. Further, it shall be unlawful for any person to interfere with any such dog while such dog is in the performance of its official duties. Any person violating this section shall be found guilty of a misdemeanor. (Prior code § 19-10.1)

9.04.020 Compounding crime.

No person in the City shall commit compounding a crime.

"Compounding a crime" consists of knowingly agreeing to take anything of value upon the agreement or understanding, express or implied, to compound or conceal a crime or to abstain from a prosecution therefor, or to withhold any evidence thereof.

For the purposes of this section, a person may be prosecuted and convicted of compounding a crime, though the person guilty of the original crime has not been charged, indicted or tried. (Prior code § 19-12)

9.04.030 Concealing identity.

No person in the City shall commit concealing identity.

"Concealing identity" consists of concealing one's true name or identity or disguising oneself with intent to obstruct the due execution of the law, or with intent to intimidate, hinder or interrupt any police officer or any other person in a legal performance of his duty or the exercise of his or her rights under this code and other ordinances of the City or laws of the State. (Prior code § 19-13)

9.04.040 Escape from custody.

No person in the City shall commit escape from custody.

"Escape from custody" consists of any person who shall have been placed under lawful arrest for the violation or alleged violation of any provision of this code, other municipal ordinances or any State or Federal statute unlawfully escaping or attempting to escape from the custody or control of any police officer, jailer, bailiff or parole or probation officer.

Whoever commits escape from custody shall be guilty of a misdemeanor. (Prior code § 19-39)

9.04.050 False police, fire or ambulance alarms.

It is unlawful for any person to make, turn in or give a false alarm of fire or of need for police or ambulance assistance, or to interfere with the proper functioning of an alarm system, or to aid or abet the commission of such an act. (Prior code § 19-42.1)

9.04.060 False police calls or reports.

No person shall knowingly make to or file with any representative of the Police Department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any violation of any ordinance occurring within the City, or any false report as to the need for police protection or assistance. (Prior code § 19-43)

9.04.070 Interference with fire controls.

No person in the City shall commit interference with fire controls.

"Interference with fire controls" consists of:

A. Giving a false fire alarm to any public officer or employee, whether by means of a fire alarm or otherwise;

B. Interfering with the proper functioning of a fire alarm system or tampering with any fire hydrant; or

C. Interfering with the lawful efforts of firefighters to extinguish a fire. (Prior code § 19-48)

9.04.080 Resisting, evading or obstructing a police officer.

No person in the City shall resist, evade, obstruct or refuse to obey a police officer.

Resisting, evading, obstructing or refusing to obey a police officer consists of either:

A. Knowingly obstructing, resisting or opposing any officer in this City, or outside this City in the event that the officer at such time and place is in pursuit of someone fleeing the jurisdiction of this City, or any other duly

authorized person serving or attempting to serve or execute any process or any rule or order of the municipal court or any other judicial writ that may be legally in the possession of such officer or authorized person; or

B. Resisting or abusing the Municipal Judge or any officer in the lawful discharge of his or her duties; or

C. Refusing to obey or comply with any lawful process or order given by any police officer acting in the lawful discharge of his duties; or

D. Intentionally fleeing, attempting to evade or evading an officer of this City when the person committing the act of fleeing, attempting to evade or evading has knowledge that the officer is attempting to apprehend or arrest him; or

E. Willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle; or

F. Interfering with, obstructing or opposing any officer in the lawful discharge of his regular and affixed duties. (Prior code § 19-57)

(Ord. No. 1034, 7-6-2010)

Editor's note—Ord. No. 1034, adopted July 6, 2010 changed the title of § 9.04.080 from officers—resisting or obstructing to resisting, evading or obstructing a police officer.

9.04.090 Officers—Refusing to aid.

No person in the City shall commit the act of refusing to aid an officer.

"Refusing to aid an officer" consists of refusing to assist any police officer in the preservation of the peace, when called upon by such officer in the name of the City or the State. (Prior code § 19-58)

Chapter 9.08 OFFENSES AGAINST THE PERSON

9.08.010 Assault—Generally.

It is unlawful for any person in the City to commit assault.

"Assault" consists of:

A. An attempt to commit a battery upon the person of another;

B. Any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he or she is in danger of receiving an immediate battery; or

C. The use of insulting language toward another, impugning his or her honor, delicacy or reputation. (Prior code § 19-4)

9.08.020 Assault—Harassment.

It is unlawful for any person in the City to commit harassment.

"Harassment" consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and which serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress. (Ord. 869 § 3 (part), 2001: Ord. 822 (part), 1994: prior code § 19-4.1)

9.08.030 Assault—Stalking.

It is unlawful for any person in the City to commit stalking.

A. "Stalking" consists of knowingly pursuing a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened. The alleged stalker must intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint; or the alleged stalker must intend to cause a reasonable person to fear for his safety or the safety of a household member. In furtherance of the stalking, the alleged stalker must commit one (1) or more of the following acts on more than one (1) occasion:

1. Following a person, other than in the residence of the alleged stalker;

2. Placing a person under surveillance by remaining present outside that person's school, residence, workplace or vehicle or any other place frequented by the person other than in the residence of the alleged stalker; or

3. Harassing a person.

B. As used in this section, household member means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child, or co-parent of a child, or a person with whom the victim has a continuing personal relationship. Cohabitation is not neces-

sary to be deemed a household member for the purposes of this section. (Ord. 869 § 3 (part), 2001: Ord. 822 (part), 1994: prior code § 19-4.2)

9.08.040 Assault—Exceptions.

The provisions of Sections 9.08 through 9.08.030 do not apply to

A. Picketing or public demonstrations that are otherwise lawful or that arise out of a bona fide labor dispute; or

B. A law enforcement officer in the performance of his or her duties. (Ord. 822 (part), 1994: prior code § 19-4.3)

9.08.050 Assault—Violation—Penalty.

Any person found guilty of violating the provisions of Sections 9.08.010 through 9.08.030 shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment, as provided in Section 1.16.010. (Ord. 822 (part), 1994: prior code § 19-4.4)

9.08.060 Reserved.

Editor's note—Ord. No. 1007, adopted January 5, 2009, repealed § 9.08.060, which pertained to assault against a household member. See also the Code Comparative Table and Disposition List.

9.08.070 Assault—Upon City police officer.

No person in the City shall commit assault upon a City police officer.

"Assault upon a City police officer" consists of:

A. An attempt to commit a battery upon the person of a municipal police officer while he or she is in the lawful discharge of his or her duties; or

B. Any unlawful act, threat or menacing conduct which causes a City police officer, while he or she is in the lawful discharge of his duties, to reasonably believe that he or she is in danger of receiving an immediate battery. (Prior code § 19-6)

9.08.080 Battery—Generally.

No person in the City shall commit battery.

"Battery" is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner. (Prior code § 19-7)

9.08.090 Reserved.

Editor's note—Ord. No. 1007, adopted January 5, 2009, repealed § 9.08.090, which pertained to battery against a household member. See also the Code Comparative Table and Disposition List.

9.08.100 Reasonable detention; assault, battery, public affray or criminal damage to property.

A. As used in this section:

1. "Licensed premises" means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors; and
2. "Proprietor" means the owner of the licensed premises or his manager or his designated representative; and
3. "Operator" means the owner or the manager of any establishment or premises open to the public.

B. Any law enforcement officer may arrest without warrant any persons he or she has probable cause for believing has committed the crime of assault as defined in Section 9.08.010 or battery as defined in Section 9.08.080, public affray as defined in Section 9.12.070, or criminal damage to property as defined in Section 9.16.050. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he or she has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault as defined in Section 9.08.010 or battery as defined in Section 9.08.080, public affray as defined in Section 9.12.070, or criminal damage to property as defined in Section 9.16.050.
(Ord. No. 982, 3-17-2008)

Chapter 9.12 OFFENSES AGAINST PUBLIC PEACE AND DECENCY

9.12.010 Aiding illegal activity.

"Aiding an illegal activity" consists of either:

A. Being found in any place where gambling or prostitution is being conducted, with knowledge of such activity; or

B. Giving or attempting to give any signal intended or calculated to warn or give warning of the approach of any police officer to any person in or about any building, trailer, motor vehicle, premises or establishment used for any illegal activity or where any illegal activity is being conducted.

Whoever commits aiding an illegal activity shall be guilty of a misdemeanor. (Prior code § 19-2.1)

9.12.020 Disorderly conduct.

No person in the City shall commit disorderly conduct.

Disorderly conduct consists of either:

A. Engaging in any public place in violent, abusive or indecent conduct which creates a clear and present danger of violence; or

B. Maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house or vehicle occupied by any person; or

C. Inciting, causing, aiding, abetting or assisting in creating any riot, affray, or disturbance at or within any dwelling or building, whether public or private, or at any other public place in the city; or

D. Using in any public place fighting words which by their very utterance are likely to provoke a violent reaction in an average person to whom such words are addressed; or

E. Maliciously disturbing, or threatening, or in an insolent manner, intentionally touching or applying force to any person, in the building or grounds of any public, private school, preschool, primary or secondary school or college; or

F. Urinating or defecating in public view on any public place or on any private property without the consent of the person lawfully in possession of the property. (Prior code § 19-36)

(Ord. No. 1037, 10-4-2010)

9.12.040 Peeping tom.

No one shall commit the offense of peeping tom.

"Peeping tom" shall consist of entering upon any private property and looking into any occupied dwelling without the consent of the occupant or owner of the dwelling.

Whoever commits the offense of peeping tom shall be guilty of a misdemeanor. (Prior code § 19-58.2)

9.12.050 Prostitution.

No person in the City shall engage in prostitution.

"Prostitution" consists of knowingly engaging in or offering to engage in a sexual act for hire.

As used in this section, "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission. (Ord. 869 § 3 (part), 2001: prior code § 19-61)

9.12.060 Patronizing prostitutes.

No person in the City shall patronize prostitutes.

"Patronizing prostitutes" consists of:

A. Entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or

B. Knowingly hiring or offering to hire a prostitute, or one believed by the offeror to be a prostitute, to engage in a sexual act with the offeror or another.

As used in this section, "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission. (Ord. 869 § 3 (part), 2001: prior code § 19-62)

9.12.070 Public affray.

No person in the City shall commit public affray.

"Public affray" consists of two (2) or more persons voluntarily or by agreement engaging in any fight or using any blows or violence toward each other in an angry or quarrelsome manner, in any public place to the disturbance of others. (Prior code § 19-63)

9.12.080 Public nuisance.

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

A. Injurious to public health, safety, morals or welfare; or

B. Interferes with the exercise and enjoyment of public rights, including the right to use public property. (Ord. 869 § 2, 2001: prior code § 19-63.1)

9.12.090 Tattooing.

A. Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

"Tattoo" means to mark or color the skin of any person by pricking in color matter so as to form indelible marks or figures or by production of scars.

"Tattoo artist" means any person who actually performs the work of tattooing.

"Tattoo establishment" means any room or space where tattooing is practiced or where the business of tattooing is conducted, or any part thereof.

"Tattoo operator" means any person who controls, operates, conducts or manages any tattoo establishment, whether actually performing the work of tattooing or not.

B. Certain Tattooing Practices Prohibited. It is unlawful for any person engaged in the practice or business of tattooing or as a tattoo operator or as a tattoo artist to tattoo any human being:

1. Using an unsanitary needle,

2. After the hour of 10:00 p.m. and before 8:00 a.m.,

3. If that customer is intoxicated, or

4. If that customer is under the age of eighteen (18) years unless written parental or legal guardian's consent is supplied. (Ord. 888, 2001; prior code § 19-71.4)

9.12.100 Telephone—Illegal use.

A. It is unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd, criminal or lascivious act, to threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful for any person to attempt by telephone to extort money or other thing of value from any other person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any other person at the place where the telephone

calls are received, or to maliciously make a telephone call, whether or not conversation ensues, with intent to annoy or disturb another or to disrupt the telecommunications of another.

B. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in subsection A of this section shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

C. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call originated or at the place where the telephone call was received. (Prior code § 19-72)

9.12.110 Unlawful assembly.

No person in the City shall commit unlawful assembly.

"Unlawful assembly" consists of three (3) or more persons assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose. (Prior code § 19-73)

9.12.120 Indecent exposure.

A. Indecent exposure consists of a person knowingly and intentionally exposing that person's primary genital area to public view or exposing of female breast.

B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits indecent exposure is guilty of a misdemeanor.

D. In addition to any punishment provided to the provisions of this section, the court shall order a person convicted of committing indecent exposure to participate in and complete a program of professional counseling at that person's own expense.
(Ord. No. 1040, 2-28-2011)

Chapter 9.16 OFFENSES AGAINST PROPERTY

9.16.010 Abandonment of dangerous containers or motor vehicles.

No person in the City shall commit abandonment of dangerous containers or motor vehicles.

"Abandonment of dangerous containers or motor vehicles" consists of:

A. Any person abandoning, discarding or keeping in any place accessible to children any refrigerator, icebox, freezer, airtight container, cabinet or similar container of a capacity of one and one-half (1½)cubic feet or more, which is no longer in use;

B. Any person who, being the owner, lessee or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container of a capacity of one and one-half (1½) cubic feet or more to remain upon such premises in a condition whereby a child may be imprisoned therein;

C. Any person abandoning or keeping in any place accessible to children any motor vehicle, without having all inflammable materials removed therefrom.

(Prior code § 19-1)

9.16.020 Air conditioners—Permitting water to flow into streets and sewers.

It is unlawful for any person within the City limits to own, operate or maintain air conditioning units utilizing water as a cooling element in such a manner as to permit the flow of water from such conditioners into the streets, alleys, sidewalks or sewer system of the City. (Prior code § 19-3)

9.16.030 Barricades—Removal prohibited.

"Removal of barricades" consists of knowingly or willfully removing, destroying or interfering with any barrier, guard or light placed before or at any dangerous place in or near the streets, sidewalks or ways of the City for the purpose of warning or protecting travelers from injury or damage; provided, that removal after the danger has ceased and temporary removal to allow the passage of a vehicle with immediate subsequent replacement shall not be considered unlawful.

Whoever commits removal of barricades shall be guilty of a misdemeanor. (Prior code § 19-6.1)

9.16.040 Concealment on private property.

"Concealment on private property" shall consist of concealing oneself upon any property of another, whether commercial or residential property, without lawful business with the person in lawful possession of the premises.

Whoever commits concealment on private property shall be guilty of a misdemeanor. (Prior code § 19-13.1)

9.16.050 Criminal damage to property.

"Criminal damage to property" consists of intentionally damaging any real or personal property of another without the consent of the owner of the property.

Whoever commits criminal damage to property when the value of the property damaged is not more than one thousand dollars ($1,000.00) is guilty of a misdemeanor. (Prior code § 19-22)
(Ord. No. 999, 9-8-2008)

9.16.060 Criminal trespass.

No person in the City shall commit criminal trespass.

A. "Criminal trespass" consists of:

1. Knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the property; or

2. Knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the courts, by the posting of the property at all vehicular access entry ways; or

3. Knowingly entering or remaining upon property owned, operated or controlled by the City knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

B. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and he shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

C. Whoever commits criminal trespass is guilty of a misdemeanor.

D. Whoever knowingly removes, tampers with or destroys any "no trespass" sign, when the damage is not more than one thousand dollars ($1,000.00),

is guilty of a petty misdemeanor. (Prior code § 19-23)
(Ord. No. 1038, 1-3-2011)

9.16.070 Defacing tombs.

No person in the City shall deface a tomb.

"Defacing tombs" consists of either:

A. Intentionally defacing, breaking, destroying or removing any tomb, monument or gravestone erected to any deceased person or any memento or any memorial or any ornamental plant, tree or shrub appertaining to the place of burial of any human being; or

B. Intentionally marking, defacing, injuring, destroying or removing any fence, post, rail or wall of any cemetery or graveyard or erected within any cemetery or graveyard. (Prior code § 19-29)

9.16.080 Handbills or circulars—Unlawful distribution.

A. It is unlawful for any person to distribute advertising matter commonly known as handbills or circulars within the City, in any manner calculated to cause the same to be thrown or blown about on the streets or alleys of the City, or in any of the following manners:

1. By placing handbills or circulars within or upon automobiles, trucks or other vehicles;

2. By handing circulars or handbills to pedestrians upon the streets or sidewalks of the City, unless a request for such circulars or handbills is made by such pedestrian;

3. By placing handbills or circulars on the porches or behind the screen doors of dwelling houses or other buildings within the City;

4. By placing circulars or handbills on the streets or sidewalks of the City in any manner calculated to cause the same to be thrown or blown about.

B. As used in this section, "handbills or circulars" means any advertising matter or other printed matter which is not issued periodically, or which does not contain the general or correct news or news of the day, designed to be read by the public generally, or which is not a bona fide news medium, or the primary purpose of which is advertising. (Prior code § 19-47)

9.16.090 Library books, periodicals, etc.—Failure to return after notice.

It is unlawful for any person to detain or fail to return to the Hobbs Public Library any book, periodical, map, newspaper, plate, engraving, magazine, pamphlet, manuscript, picture, clipping or other property in the custody of or belonging to the public library, after a lapse of fifteen (15) days from the date of posting by certified mail of a notice addressed to such person at the last address furnished the public library, which notice may be given at any time after the date on which such person should have returned the property in accordance with the rules of such public library; provided, that no penalty shall be imposed in any case where restitution in value shall have been made prior to the expiration of such fifteen-day period. (Prior code § 19-50)

9.16.100 Library books—Use of fictitious name or address to obtain.

It is unlawful to give a fictitious or incorrect name or address at the Hobbs Public Library in order to obtain possession or use of any property in the custody of or belonging to the public library. (Prior code § 19-51)

9.16.110 Library books—Cutting, writing upon or injuring.

It is unlawful for any person to cut, write upon, injure, deface, tear, damage or destroy any book, periodical, map, newspaper, plate, engraving, magazine, pamphlet, manuscript, picture, clipping or other property in the custody of or belonging to the public library, without the consent of the public library. (Prior code § 19-52)

9.16.120 Moving in, squatting, parking or locating with tent or trailer, on land without owning or leasing land.

It is unlawful for any person to move in or upon, park, squat or locate with a tent, trailer, trailer house, temporary structure, truck or automobile containing living

quarters, on any piece or parcel of land located within the corporate limits not owned or leased by such person. (Prior code § 19-53)

9.16.130 Obstructing movement.

No one shall commit the offense of obstructing movement.

"Obstructing movement" consists of either:

A. Hindering, annoying or molesting persons passing along any street, sidewalk, crosswalk or other public way; or

B. Loitering, sitting or standing at the entrance to any church, public hall, theater, public building or other place of public assemblage in any manner so as to unreasonably obstruct such entrance.

Whoever commits the offense of obstructing movement shall be guilty of a misdemeanor. (Prior code § 19-56.1)

9.16.140 Placing injurious substances on streets.

No person in the City shall place any injurious substance upon any public street.

"Placing injurious substances on streets" consists of any person throwing, depositing or placing any glass, bottles, nails, tacks, hoops, wire, cans or any other material or substances upon any public street, which cause or which are likely to cause injury to any person, animal or vehicle traveling upon such public street. (Prior code § 19-59)

9.16.150 Projecting missile at or from moving motor vehicle.

It is unlawful for any person to shoot, throw, toss or otherwise project any egg, rock, snowball, water balloon or any other missile at or from any moving motor vehicle. (Prior code § 19-60.1)

9.16.160 Tampering with public utilities.

A. It is unlawful for any person to connect or attach or cause to be connected or attached any kind of pipe, wire or other contrivance to any pipe, fire hydrant, line, wire or other conductor or appurtenance thereto, carrying gas, water, electricity, television signals, telephone signals or other conveyances provided by or belonging to a public utility (whether publicly or privately owned) in such a manner as to enable such person or other persons to receive, consume or use gas, water, electricity, television signals, telephone signals or other utility service without the same

passing through a meter, without obtaining the proper permit, without paying the required fee or in any other manner so as to evade payment for such public utility service.

B. It shall also be unlawful for any person to damage, tamper with or destroy any pipe, line, wire, meter or any other part of any public utility, including cable television, water, gas, electricity and telephone and telegraph systems.

C. If any meter, pipe, line, wire, fixture or other installation or appurtenance thereto provided by a public utility primarily for the purpose of serving a particular account is found to have been tampered with or altered in violation of subsection A of this section, the person or other customer whose name appears on the records of the public utility affected as the person or firm responsible for payment of such account shall be held prima facie responsible for such violation.

D. Any act which, if uncorrected, would result in any utility customer being billed or charged by such utility for a lesser amount of utility service than actually furnished shall be deemed in violation of subsection A of this section.

E. Conviction for violation of this section shall not affect the offender's civil liability for damages done to facilities or responsibility to pay for gas, water, electricity, television signals, telephone signals or other utility service used but not paid for. (Prior code § 19-71.3)

9.16.170 Wrongful use of public property.

No person in the City shall commit wrongful use of public property.

"Wrongful use of public property" consists of:

A. Knowingly entering any public property without permission of the lawful custodian or his representative, when the public property is not open to the public;

B. Remaining in or occupying any public property after having been requested to leave by the lawful custodian or his or her representative, who has determined that the public property is being used or occupied contrary to its intended or customary use or that the public property may be damaged or destroyed by the use;

C. Depriving the general public of the intended or customary use of public property;

D. Entering or remaining in or upon the buildings or grounds of any public school, private school, parochial school, preschool, primary or secondary school, college or seminary with the intention, as evidenced by some overt act, of interfering with the activities of such institutions; or

E. Loitering upon or concealing oneself on or within any public place including, but not limited to, any alley, street, park or other public place during the nighttime hours. (Prior code § 19-82)

9.16.180 No trespassing notice—Sign contents and posting requirements—Making entry unlawful.

A. The owner, lessee or person lawfully in possession of real property in New Mexico except property owned by the State or Federal government, desiring to prevent trespass or entry onto the real property shall post notices parallel to and along the exterior boundaries of the property to be posted at conspicuous places at a distance apart of not more than:

1. Three hundred (300) feet if the property is fenced or otherwise obviously enclosed; or

2. One hundred fifty (150) feet if the land is unfenced or unenclosed.

B. The notices posted shall prohibit all persons from trespassing or entering upon the property without permission of the owner, lessee, person in lawful possession or his or her agent. The notices shall:

1. Be printed legibly in English and in Spanish;

2. Be at least one (1) foot high by two (2) feet long;

3. Contain the name and address of the person under whose authority the property is posted or the name and address of the person who is authorized to grant permission to enter the property;

4. Be placed at each roadway or apparent way or access onto the property, in addition to the posting of the boundaries; and

5. Where applicable, state any specific prohibition that the posting is directed against, such as "no trespassing" or any other specific prohibition.

C. No person shall enter upon or trespass on any real property posted in accordance with this section without the permission of the owner, lessee, person in lawful possession or his or her agent. (Prior code § 19-83)

9.16.190 Placing advertising matter on utility poles.

It is unlawful for any person to post, place, paint or attach upon any pole of any telegraph, telephone, electric or other utility company within the City limits any sign, poster, placard or other advertising matter of any business, political party or candidate, unless permission of such company is first had and obtained in writing and approved by the City Commission. (Prior code § 24-5)

9.16.200 Elimination of unauthorized graffiti.

An owner, occupant, or agent in charge of real or personal property shall have a duty to remove unauthorized graffiti.

A. Whenever the City becomes aware of the existence of graffiti on any real property, including structures, within the City and visible from the public right-of-way or City-owned land, the Code Enforcement Department shall give or cause to be given notice that the graffiti should be removed or effectively obscured, removal being either by the owner, occupant, or agent in charge of real or personal property or by the City or the City's agent. A reasonable, good faith effort shall be made to deliver the notice to the owner, occupant or agent in charge of the property. The owner, occupant or agent in charge of the property may cause the graffiti to be removed or completely obliterated; if this is the intent, they should advise the Code Enforcement Department within ten (10) days from the date the notice is delivered that the owner, occupant or agent will remove the graffiti within thirty (30) days. Also, within ten (10) days from the date the notice is delivered, the owner, occupant or agent may advise the Department that the marking identified was authorized by the owner or person in charge of the property and thus is not graffiti as herein defined; the City will then not require removal.

B. If the owner, occupant or agent in control of the property does not notify the Code Enforcement Department that they will remove the graffiti or alternatively that it is not graffiti because the installation was authorized as provided in (A) of this section, it will be deemed consent for the City to enter the property and remove or completely obliterate the graffiti. If practicable, the City will secure written consent of the property owner or person in control of the property in advance of entry onto property for graffiti removal purposes and will remove or obliterate graffiti as public monies become available. The City will make a good faith effort to use a color similar to that of the structure affected.

C. The Code Enforcement Department is authorized to use City employees, contractors, volunteers, individuals convicted of criminal charges or county jail inmates who have been duly made available for such graffiti removal work.

(Ord. No. 994, 7-7-2008)

9.16.210 Unauthorized graffiti on personal or real property.

"Unauthorized graffiti" consists of intentionally and maliciously defacing any real or personal property of another with graffiti or other inscribing material inscribed with ink, paint, spray paint, crayon, charcoal or use of any object without the consent or reasonable ground to believe there is consent of the owner of the property when the damage to the property is one thousand dollars ($1,000.00) or less.

A. It shall be unlawful for any person to commit the offense of unauthorized graffiti as defined in this section.

B. Whoever commits the offense of unauthorized graffiti is guilty of a petty misdemeanor and shall be punished as provided for by Section 1.16.010 herein. In addition to those penalties, a person convicted of unauthorized graffiti shall be required to perform a mandatory one hundred (100) hours of community service within a continuous six-month period immediately following the conviction and shall be required to provide restitution to the property owner for the cost of damages and restoration.

C. When a single occurrence of unauthorized graffiti is committed by more than one (1) individual, the court may apportion the amount of restitution owed by each offender in accordance with each offender's degree of culpability.

(Ord. No. 995, 7-7-2008)

9.16.220 Sale, provision and use of glue, aerosol paint, paint stick, and broad-tipped indelible marker; penalties.

A. Definitions.

1. Glue shall mean what is commonly referred to as plastic or model airplanes cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methyl isobutyl, ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

2. Broad-tipped indelible marker shall mean any indelible marker or similar implement with a tip which is one-quarter (1/4) inch or greater at its broadest width.

B. Furnishing to minors—Petty misdemeanor. It shall be a petty misdemeanor for any person, other than a parent or legal guardian, to sell, offer to sell, exchange, give, loan, or otherwise furnish, or cause to permit to be sold, offered to be sold, exchanged, given, loaned, or otherwise furnished, any glue, aerosol paint container, paint stick, or broad-tipped indelible marker to any person under the age of eighteen (18) years of age without written consent of the minor's parent or guardian. A state driver's license, an identification card issued to a member of the United States armed forces, or an identification card issued pursuant to NMSA 1978, § 66-5-401 (2004), et. seq., as such may be amended from time to time, shall be considered prima facie evidence of age.

C. Sale of glue, aerosol paint, paint stick, or broad-tipped indelible marker.

1. Storage and display. Every person who owns, conducts, manages, or operates a place of business engaged in the retail sale of glue, aerosol paint containers, paint sticks, or broad-tipped indelible markers shall store or cause to be stored such glue, aerosol paint containers, paint sticks, and broad-tipped markers either:

   a. In an area continuously observable, through direct visual observation or surveillance equipment, by employees of the retail establishment during the business hours; or

   b. In an area not accessible to the public during business hours without employee assistance.

2. Signs. Every person who owns, conducts, manages, or operates a place of business engaged in the retail sale of glue, aerosol paint containers, paint sticks, or broad-tipped indelible markers shall prominently display signs or decals in clear view of the public:

   a. At or near any display containing aerosol paint containers, paint sticks, and/or broad-tipped indelible markers stating:

      GRAFFITI IS A CRIME. ANY PERSON DEFACING PUBLIC OR PRIVATE PROPERTY IS GUILTY OF A CRIME PUNISHABLE BY IMPRISONMENT OF UP TO 90 DAYS AND/OR A FINE OF UP TO $500.00.

b. At each cash register or other point of customer payment, and in clear view of the person accepting customer payment, stating:

NO GLUE, AEROSOL PAINT CONTAINERS, PAINT STICKS, OR BROAD-TIPPED INDELIBLE MARKERS MAY BE SOLD TO MINORS, SALES TO PERSONS UNDER 18 YEARS OF AGE IS AGAINST THE LAW. IDENTIFICATION IS REQUIRED.

c. At or near any display of glue or aerosol paint containers stating:

INHALATION OF GLUE OR AEROSOL PAINT IS A CRIME. IT IS PUNISHABLE BY IMPRISONMENT OF UP TO 90 DAYS AND/OR A FINE OF UP TO $500.

The signs shall be in both English and Spanish with the lettering at least three-eighths (3/8) inch high.

D. Use of glue, aerosol spray products, other chemical substances.

1. Inhalation of fumes. No person shall intentionally smell, sniff or inhale the fumes or vapors from a glue, aerosol spray product, mouthwash or other chemical substance for the purpose of causing a condition of or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses, or for the purpose of in any manner change, distorting or disturbing the audio, visual or mental process.

2. Possession for inhalation prohibited. No person shall intentionally possess a glue, aerosol spray product or other chemical substance for any purpose set forth in subsection (D)(1) of this section.

3. Application of section. The provisions of subsection (D) do not apply to any aerosol spray product or chemical substance used for legitimate medicinal purposes and obtained either by or with a prescription or for medicinal purposes by a person over the age of eighteen (18).

Penalty. A person who violates any provision of this section shall be deemed guilty of committing a misdemeanor and shall be punished as provided for by Section 1.16.010 herein. The sentence or fine may be waived at the discretion of the Court in the case of any person who has not been previously convicted of violating this section and who has successfully completed a drug education or treatment program approved by the Court.
(Ord. No. 997, 7-21-2008)

9.16.230 Injuring or tampering with vehicle.

A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person;

1. Purposely and without authority from the owner, starting or causing to be started the engine of any motor vehicle;

2. Purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;

3. Purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstering of a motor vehicle that is the property of another;

4. Purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;

5. Purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;

6. Purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;

7. Maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

8. Purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.

B. Whoever commits injuring or tampering with a motor vehicle is guilty of a misdemeanor.

C. As used in this section, "motor vehicle" means a motor vehicle as defined by the Motor Vehicle Code incorporated in Title 10 of this code.
(Ord. No. 1020, 9-21-2009)

Chapter 9.20 OFFENSES BY OR AGAINST MINORS

9.20.010 Intent.

A. Findings.

1. The City Commission has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime, by persons under the age of eighteen (18) years in the City; and
2. Persons under the age of eighteen (18) years are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang related activities and to be victims of older perpetrators of crime.

B. Purpose. The purpose of this chapter is to provide for the protection of minors from each other and from other persons, to provide for the enforcement of parental control over and responsibility for children, to protect the general public and reduce the incidence of juvenile criminal activities pursuant to the City's power to promote the health, safety and general welfare of its citizens. (Ord. 824 § 3 (part), 1994: prior code § 15-1)

9.20.020 Definitions.

For the purposes of this chapter, the following words and phrases and their derivations shall have the meanings respectively ascribed to them by this section:

Curfew Hours.

1. "Nighttime curfew hours" means:
   a. 11:00 p.m. until 6:00 a.m. of the following day on any Sunday, Monday, Tuesday, Wednesday or Thursday; and
   b. 12:01 am. until 6:00 a.m. on any Saturday or Sunday.
2. "School-time curfew hours" means:

   8:30 a.m. until 3:00 p.m., or during the school hours for the institution attended, on any Monday, Tuesday, Wednesday, Thursday or Friday on days that the school in which a minor, who is subject to compulsory education or to compulsory continuing education, is enrolled and is in session, unless the minor has school permission to be off-campus or parental permission, if home-schooled, to be away from the home-school site.

"Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

"Establishment" means any private-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

"Guardian" means:

1. A person who, under court order, is the guardian of the person of a minor; or
2. A public or private agency with whom a minor has been placed by a court.

"Home-schooled" means a student who attends a home-school educational program officially, recognized by the Hobbs Municipal School District and conducted in accordance with New Mexico law.

"Minor" means any person under eighteen (18) years of age.

"Operate" means any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

"Parent" means a person who is:

1. A natural parent, adoptive parent, or stepparent of another person; or
2. At least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

"Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

"Remain" means to:

1. Linger or stay; or
2. Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

"Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or

impairment of the function of any bodily member or organ. (Ord. 869 § 3 (part), 2001; Ord. 853 §§ 1, 2, 1999; Ord. 824 § 3 (part), 1994: prior code § 15-2)

9.20.030 Abandonment or neglect of child.

A. It is unlawful for any person in the City to abandon or neglect a child.

B. As used in this section:

1. "Abandonment of a child" consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect.

2. "Child" means a person who has not reached the age of majority.

3. "Neglect" means that the child is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian, or the neglect or refusal of the parent, guardian or custodian, when able to do so, to provide them. (Ord. 869 § 3 (part), 2001: prior code § 19-2)

9.20.040 Curfew offenses.

A. A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the City during nighttime or school-time curfew hours.

B. A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the City during nighttime or school-time curfew hours.

C. The owner, operator or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during nighttime or school-time curfew. (Ord. 853 § 3, 1999: Ord. 824 § 3 (part), 1994: prior code § 15-3)

9.20.050 Curfew defenses.

It is a defense to prosecution under Section 9.20.040 that the minor was:

1. Accompanied by the minor's parent or guardian;

2. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
3. In a motor vehicle involved in interstate travel;
4. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
5. Involved in an emergency;
6. On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
7. Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the City, a civic organization, or another similar entity that takes responsibility for the minor;
8. Exercising first amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
9. Married or had been married or has disabilities of minority removed in accordance with Chapter 28 of the New Mexico Human Rights act. (Ord. 824 § 3 (part), 1994: prior code § 15-4)

9.20.060 Curfew enforcement.

Before taking any enforcement action on the offenses covered by Section 9.20.040, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest on the offenses covered by Section 920.040 unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Section 9.20.050 is present. (Ord. 824 § 3 (part), 1994: prior code § 15-5)

9.20.070 Permitting to loiter in or about poolrooms.

It is unlawful for the operator of any poolroom or domino parlor within the City to permit any person under the age of twenty-one (21) years to attend, frequent or loiter in or about such poolroom or domino parlor, unless such person under the age

of twenty-one (21) years is accompanied by a parent or guardian; provided, that the word "poolroom," as used in this section, shall not include bowling alleys and other similar establishments which are normally frequented by minors and which provide pool tables for the use of their patrons. (Ord. 824 § 3 (part), 1994: prior code § 15-6)

9.20.080 Nightclubs and lounges—Permitting to loiter in or about.

It is unlawful for the operator of any nightclub, lounge or other place where intoxicating liquors are sold or served to permit any person under the age of twenty-one (21) years to attend, frequent or loiter in or about such nightclub, lounge or other place where intoxicating liquors are sold or served, unless such person under the age of twenty-one (21) years is accompanied by a parent or guardian; provided, that cafes, restaurants or other eating establishments serving intoxicating liquors in accordance with law shall be permitted to serve such person food or nonintoxicating liquors, provided such person is in such cafe, restaurant or eating establishment for the purpose of eating and not for the purpose of frequenting or loitering as provided by this section. (Ord. 824 § 3 (part), 1994: prior code § 15-7)

9.20.090 Minors loitering where intoxicating liquors sold or served.

It is unlawful for any person under the age of twenty-one (21) years to attend, frequent or loiter in or about any nightclub, lounge or other place where intoxicating liquors are sold or served, unless such person is accompanied by a parent or guardian; provided, that nothing herein shall be construed to prohibit a person under the age of twenty-one (21) years from attending a cafe, restaurant or other eating establishment which serves intoxicating liquors if such person attends the establishment for the purpose of eating or drinking nonalcoholic beverages.

Whoever commits such offense shall be guilty of a misdemeanor. (Prior code § 19-52.1)

9.20.100 Nightclubs and lounges—Persons holding dispensers' licenses—Permitting minors to enter.

It is unlawful for any holder of a dispenser's license issued under the terms and provisions of this code to permit any person under the age of twenty-one (21) years to enter his or her place of business, unless such person is accompanied by his or her parents or guardian. (Ord. 824 § 3 (part), 1994: prior code § 15-8)

9.20.110 Nightclubs and lounges—Permitting minors to work in place of business.

It is unlawful for any holder of a dispenser's license issued under the terms and provisions of chapter this code to permit any person under the age of twenty-one (21) years to work in his or her place of business in the sale and service of alcoholic liquor. (Ord. 824 § 3 (part), 1994: prior code § 15-9)

9.20.120 Inducing, encouraging or assisting violation.

Any person commits an offense if he or she induces, encourages or assists any minor to do any act in violation of this chapter. (Ord. 824 § 3 (part), 1994: prior code § 15-10)

9.20.130 Violations—Penalties.

A. Any police officer is authorized to take into custody a minor violating a provision of Section 9.20.040 of the Hobbs Municipal Code, as amended.

B. For a first-time violation of school-time curfew hours, a police officer shall deliver the minor to the principal or other designated official at the school where the minor is enrolled or to a parent or guardian, if home-schooled.

C. For a second violation of school-time curfew hours, the minor shall be taken by the officer to the police station or other location as designated by the Chief of Police. An officer who takes the minor to the police station or other designated location shall use due diligence to find a parent or guardian and shall release the minor to such person at the police station or other designated location.

D. For a third or subsequent violation of school-time curfew hours or in lieu of taking a minor into custody as authorized, a police officer my issue a citation to the minor. A copy of the citation shall be sent to the minor's parent or guardian and the minor's school.

E. Any minor found guilty of violating the provisions of Section 9.20.040 relating to nighttime curfew hours or a violation of school-time curfew hours for which a citation is issued shall be punished by a fine of not more than five hundred dollars ($500.00). Any person eighteen (18) years of age or older found guilty of violating the provisions of this chapter shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment Every day any violation of this chapter shall continue shall constitute, except where otherwise

provided, a separate offense. (Ord. 853 § 4, 1999: Ord. 824 § 3 (part), 1994: prior code § 15-11)

9.20.140 Parental responsibility for children.

A. Purpose. The purpose of this section is to provide for the protection of children from other persons, from each other and from certain inherent hazards, to provide for the enforcement of parental control over children and responsibility for children, to protect the general public and reduce the incidents of juvenile delinquent acts pursuant to the City's power to promote the health, safety and general welfare of its citizens.

B. Definitions.

1. Parent: A parent, step-parent, guardian or any other person who has care or custody of a child.
2. Child: For the purposes of this ordinance, a child is an unemancipated person under eighteen (18) years of age.
3. Delinquent act: An act committed within the City limits of Hobbs by a child as specifically enumerated in NMSA 1978 § 32A-2-3 A (2003).
4. Conduct indicating a need for supervision: Conduct by a child which a reasonably prudent parent would take necessary steps to prevent.
5. Parental Control: Parental control includes, but is not limited to the following:
    a. Keeping illegal drugs and illegal firearms out of the home;
    b. Forbidding the minor from keeping stolen property or illegally possessing firearms or illegal drugs;
    c. Preventing the child from applying unauthorized graffiti as defined in NMSA 1978 Section 30-15-1.1 (1995), as amended;
    d. Preventing the child from violating NMSA 1978 Sections 22-12-1 through 22-12-9 (2007), Compulsory School Attendance Law;
    e. Preventing the child from being served or provided alcohol from anyone other than the child's parent;
    f. Preventing the child from procuring or attempting to procure alcohol;
    g. Preventing the child from procuring or attempting to procure tobacco products;
    h. Providing reasonable supervision of the child.

C. Duty of parental control.

1. A parent has a duty to exercise reasonable parental control to prevent his or her child from engaging in delinquent act(s) or conduct indicating a need for supervision.

2. A parent commits an offense if he or she fails to provide parental control to prevent his or her child from engaging in delinquent act(s) or conduct indicating a need for supervision.

3. A parent who violates this section shall be given a warning by the Municipal Court on the first such conviction, sentenced to pay a one hundred dollar ($100.00) fine on the second such conviction, sentenced to pay a five hundred dollar ($500.00) fine on the third such conviction, and sentenced to pay a five hundred dollar ($500.00 fine and up to thirty (30) days in jail on each subsequent conviction.

4. In addition to, or in lieu of the penalties in subparagraph 3. above, the Court may require completion of parenting classes and/or family counseling, community service including, but not limited to, graffiti elimination and/or restitution for damages as a result of the parent's failure to supervise his or her child.

5. This section is not intended to replace the "New Mexico Compulsory School Attendance Law," NMSA 1978 Sections 22-12-1 through 22-12-9 (2007), any truancy supervision by the school district, private schools or any other school recognized by law, or any state or federal statute that may be applicable herein.

(Ord. No. 998, 9-8-2008)

Chapter 9.24 THEFT, FRAUD AND SIMILAR OFFENSES

9.24.010 Cheating machine or device.

No person in the City shall commit the offense of cheating a machine or device.

"Cheating machine or device" consists of any person, with intent to defraud, attempting to operate or causing to be operated any automatic vending machine, parking meter, coin box telephone or any machine or receptacle designed to receive lawful money of the United States in connection with the sale, use or enjoyment of property or service, by means of any slug, or by any false, counterfeited, mutilated,

sweated or foreign coin, or by any means, method, trick or device. (Prior code § 19-11)

9.24.020 Embezzlement.

No person in the City shall commit embezzlement.

"Embezzlement" consists of the embezzling or converting to a person's own use of anything of value, with which such person has been entrusted, with fraudulent intent to deprive the owner thereof, when the value of the thing embezzled or converted is not more than five hundred dollars ($500.00). (Prior code § 19-37) (Ord. No. 999, 9-8-2008)

9.24.030 Encumbered property—Improper sale, disposal, removal or concealing.

No person in the City shall commit improper sale, disposal, removal or concealing of encumbered property.

"Improper sale, disposal, removal or concealing of encumbered property" consists of any person, knowingly and with intent to defraud, selling, transferring, removing, concealing or in any manner disposing of any personal property upon which a security interest, chattel mortgage or other lien or encumbrance has attached or been retained, without the written consent of the holder of such security interest, chattel mortgage, conditional sales contract, lien or encumbrance. (Prior code § 19-38)

9.24.040 Falsely obtaining services or accommodations.

No person in the City shall commit the offense of falsely obtaining services or accommodations.

"Falsely obtaining services or accommodations" consists of any person obtaining any service, food, entertainment or accommodations without paying therefor, and with the intent to cheat or defraud the owner or person supplying such service, food, entertainment or accommodations. (Prior code § 19-41)

9.24.050 Falsely representing self as incapacitated.

No person in the City shall falsely represent himself or herself as incapacitated.

"Falsely representing self as incapacitated" consists of any person falsely representing himself or herself to be blind, deaf, dumb, crippled or otherwise

physically defective for the purpose of obtaining money or other thing of value. (Prior code § 19-42)

9.24.060 Fraud.

No person in the City shall commit fraud.

"Fraud" consists of the intentional misappropriation or taking of anything of value which belongs to another, by means of fraudulent conduct, practices or representations, when the value of the thing misappropriated or taken is not more than five hundred dollars ($500.00). (Prior code § 19-45)
(Ord. No. 999, 9-8-2008)

9.24.070 Larceny.

No person in the City shall commit larceny.

"Larceny" consists of the stealing of anything of value which belongs to another, when the value of the thing stolen is not more than five hundred dollars ($500.00). (Prior code § 19-49)
(Ord. No. 999, 9-8-2008)

9.24.080 Receiving stolen property.

A. "Receiving stolen property" means intentionally receiving, retaining or disposing of stolen property, knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.

B. The requisite knowledge or belief that property has been stolen is presumed in the case of an individual or dealer who:

1. Is found in possession or control of property stolen from two (2) or more persons on separate occasions; or
2. Acquires stolen property for a consideration which the individual or dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which he deals; or
3. Is found in possession or control of five (5) or more items of property stolen within one (1) year prior to the time of the incident charged pursuant to this section.

C. For the purposes of this section, "dealer" means a person in the business of buying or selling goods or commercial merchandise.

D. Whoever commits receiving stolen property when the value of the property not more than five hundred dollars ($500.00) is guilty of the offense of receiving stolen property. (Prior code § 19-64)
(Ord. No. 999, 9-8-2008)

9.24.090 Shoplifting—Definitions.

As used in Sections 9.24.100, 9.24.110 and 9.24.120:

1. "Merchandise" means chattels of any type or description, regardless of the value offered for sale in or about a store.
2. "Merchant" means any owner or proprietor of any store, or any agent, servant or employee of the owner or proprietor.
3. "Store" means a place where merchandise is sold or offered to the public for sale at retail. (Prior code § 19-69)

9.24.100 Shoplifting—Prohibited—Elements of offense.

No person in the City shall commit the offense of shoplifting.

A. "Shoplifting" consists of any one (1) or more of the following acts:
   1. Willfully taking possession of merchandise with the intention of converting such merchandise without paying for it;
   2. Willfully concealing merchandise with the intention of converting it without paying for it;
   3. Willfully altering a label, price tag or marking upon merchandise with the intention of depriving the merchant of all or some part of the value it; or
   4. Willfully transferring any merchandise from the container in or on which it is displayed to another container with the intention of depriving the merchant of all or some part of the value it.

B. Whoever commits shoplifting when the value of the merchandise shoplifted is not more than five hundred dollars ($500.00) is guilty of a misdemeanor.

(Prior code § 19-70)
(Ord. No. 999, 9-8-2008)

9.24.110 Shoplifting—Presumptions created.

Any person who willfully conceals merchandise on his or her person or on the person of another, or among his or her belongings or the belongings of another, or on or outside the premises of the store shall be prima facie presumed to have

concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his or her belongings, it shall be prima facie evidence of willful concealment. (Prior code § 19-71)

9.24.120 Shoplifting—Reasonable detention—Arrest without warrant.

If any law enforcement officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it or has willfully concealed merchandise, and that he or she can recover the merchandise by detaining the person or taking him or her into custody, the law enforcement officer, special officer or merchant may, for the purpose of attempting to effect a recovery of the merchandise, take the person into custody and detain him or her in a reasonable manner for a reasonable time. Such taking into custody or detention shall not subject the officer or merchant to any criminal or civil liability.

Any law enforcement officer may arrest without warrant any person he or she has probable cause for believing has committed the crime of shoplifting. Any merchant who causes such an arrest shall not be criminally or civilly liable If he or she has probable cause for believing the person so arrested has committed the crime of shoplifting. (Prior code § 19-17.1)

9.24.130 Unlawful removal of effects.

It is unlawful for any person in the City to commit unlawful removal of effects.

"Unlawful removal of effects" consists of any person removing or causing to be removed any baggage or effects from any hotel, motel, trailer park, inn, rented dwelling or boardinghouse, while there is a lien existing thereon for the proper charges due for fare or board furnished from such hotel, motel, trailer park, inn, rented dwelling or boardinghouse and where the owner or person in possession of such baggage or effects is given actual notice of the fact of such lien, or where a notice of such lien has been conspicuously posted upon the premises adjacent to such baggage or effects, giving notice of the fact of such lien and the amount thereof. (Prior code § 19-74)

9.24.140 Worthless Check Act—Citation.

Sections 9.24.140 through 9.24.210 may be cited as the "Worthless Check Act." (Prior code § 19-75)

9.24.150 Worthless Check Act—Definitions generally.

As used in the Worthless Check Act:

1. "Check" means any check, draft or written order for money.
2. "Credit" means an arrangement or understanding with the drawer for the payment of the check.
3. "Draw" means making, drawing, uttering or delivering a check.
4. "Things of value" includes money, property, services, goods and wares and lodging. (Prior code § 19-76)

9.24.160 Worthless Check Act—Purpose.

It is the purpose of the Worthless Check Act to remedy the evil of giving checks on a bank without first providing funds in or credit with the depository on which they are made or drawn to pay or satisfy the same, which tends to create the circulation of worthless checks on banks, bad banking, check kiting and mischief to trade and commerce. (Prior code § 19-77)

9.24.170 Worthless Check Act—Issuing worthless check.

It is unlawful for a person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in full upon its presentation. (Prior code § 19-78)

9.24.180 Worthless Check Act—Exceptions.

The Worthless Check Act does not apply to:

A. Any check where the payee or holder knows, or has been expressly notified prior to the drawing of the check, or has reason to believe, that the drawer did not have on deposit or to his or her credit with the drawee sufficient funds to insure payment on its presentation; or

B. Any postdated check. (Prior code § 19-79)

9.24.190 Worthless Check Act—Rules of evidence.

In the prosecution of offenses under the Worthless Check Act, the following rules of evidence shall govern:

A. If a check, payment of which is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in such

bank, proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay such draft.

B. If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within ten (10) days after notice to him or her that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank or depository at the time of the making or drawing of such check and of an intent to defraud. (Prior code § 19-80)

9.24.200 Worthless Check Act—Notice defined.

"Notice," as used in the Worthless Check Act, shall consist of either notice given to the person entitled thereto in person or notice given to such person in writing. The notice in writing is presumed to have been given when deposited as certified matter in the United States Mail, addressed to the person at his address as it appears on the check. (Prior code § 19-81)

9.24.210 Tampering with evidence.

Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.

Any person who violates this section shall be guilty of a petty misdemeanor. (Ord. No. 1000, 10-6-2008)

Chapter 9.28 DRUGS AND DRUG PARAPHERNALIA

9.28.010 Paraphernalia—Use, possession, delivery and advertisement.

A. As used in this section, the following terms shall have the meanings respectively ascribed to them by this subsection:

"Controlled substance" means a drug, substance or immediate precursor listed in Schedules I through V of the State Controlled Substances Act or regulations

adopted thereto (Sections 30-31-6 to 30-31-10 NMSA 1978). A copy of the Controlled Substances Act will be kept on file in the office of the City Clerk for public inspection or copying upon payment of a reasonable fee.

"Deliver" means the actual, constructive or attempted transfer from one (1) person to another of paraphernalia as defined herein.

"Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. Such term does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

"Paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens. It includes, but is not limited to:

1. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens or from which a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens can be derived;

2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

4. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body; and
12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens into the human body, such as:
    a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chilams;

l. Bongs; and

m. Ice pipes or chillers.

In determining whether an object is paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;

3. The proximity of the object, in time and space, to a direct violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

4. The proximity of the object to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens;

5. The existence of any residue of controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens on the object;

6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of laws relating to controlled substances, *Salvia divinorum*, synthetic cannabinoids, synthetic stimulants, or synthetic hallucinogens; the innocence of an owner,

or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use or designed for use as paraphernalia;

7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community; and
14. Expert testimony concerning its use.

"Paraphernalia" shall not include hypodermic syringes or needles in the possession of a person who is required to give himself or herself injections of medicine prescribed by a physician while the person is under the care of such physician, or in the possession of a licensed physician, dentist, veterinarian, nurse, dealer in surgical and medical instruments and supplies, pharmacist or employee of a hospital, sanitarium or institution where such items are used for medical purposes by licensed medical professionals, or in the possession of an owner of livestock to be used for administering medical attention to such livestock.

"*Salvia divinorum*" means an herb belonging to the Lamiaceae family, genus Salvia, species divinorum, all parts of the plant presently classified as *Salvia divinorum* or Salvinorum A, whether growing or not, the seeds of the plant, an extract from a part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of that plant, its seeds or extracts.

"Synthetic cannabinoids" means any substance, presented under a variety of street names, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which contains any one (1) or more of the following chemicals:

1. 1-[2-(4-(morpholinyl) ethyl]-3-(1-naphthoyl) indole, commonly known as JWH-200.

2. 1-butyl-3-(1-naptholyl) indole; commonly known as JWH-073.
3. 1-hexyl-3-(1-napthoyl) indole, commonly known as JWH-019.
4. 1-pentyl-3-(1-naphthoyl) indole, commonly known as JWH-018 and AM-678.
5. 1-pentyl-3-(2-methoxyphenylacetyl) indole, commonly known as JWH-250.
6. cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47, 497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
7. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahdyrobenzo[c]chromen-l-ol), commonly known as HU-210;
8. dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
9. 1-pentyl-3-(4-chloro naphthoyl)indole, commonly known as JWH-398;
10. (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone, commonly known as JWH-015;
11. 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
12. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole, commonly known as AM-2201;
13. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole, commonly known as AM-694;
14. 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole, commonly known as RCS-8, SR-18, BTM-8;
15. 1-(N-methylpiperdin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole, commonly known as AM-1221;
16. 1-pentyl-3-[1-(4-methoxynaphthoy)]indole, commonly known as JWH-081;
17. 1-pentyl-3-(2-chlorophenylacetyl)indole, commonly known as JWH-203;
18. 1-pentyl-3-[(4-methoxy)-benzoyl]indole, commonly known as RCS-4, SR-19, BTM-4, Eric-4, E-4, OBT-199;
19. 1-pentyl-3-(4-methyl-1-naphthoyl)indole, commonly known as JWH-122;
20. 2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone, commonly known as WIN-55, 212-2;
21. 3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran, commonly known as JWH-133;

22. 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone and 1-pentyl-3-(4-ethylnaphthoyl)indole, commonly known as JWH-210;
23. 4-methoxyphenyl-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone, commonly known as Pravadoline, WIN-49,098;
24. 5-hydroxy-2-(3-hydroxypropyl)cyclohexyl-5-(2-methyloctan-2-yl)phenol, commonly known as CP-55,940;
25. (hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl]-1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol, commonly known as CP-55,244);
26. ((1-5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone), commonly known as XLR11;
27. ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)-methanone), commonly known as UR-144;
28. [3-(3-carbamoylphenyl)phenyl] N-cyclohexylcarbamate, commonly known as URB 597, KDS-4103;
29. 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one, commonly known as URB 754;
30. 1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole, commonly known as AM-2233;
31. (RS)-1-(4-Fluorophenyl)propan-2-amine, commonly known as 4-fluoroamphetamine;
32. 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as PB-22;
33. N-(1-amino-3,3-dimethyl-1-?oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide, commonly known as 5F-ADBICA;
34. N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-AKB48;
35. 1-(5-fluoropentyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid, commonly known as 5F-PB-22;
36. N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide, commonly known as ADB-FUBINACA;
37. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide, commonly known as ADBICA;

38. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, commonly known as ADB-PINACA;
39. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, commonly known as 5F-ADB-PINACA;
40. (1s,3s)-adamantan-1-yl(1-pentyl-1H-indol-3-yl)methanone, commonly known as JWH-018 adamantyl;
41. naphthalen-1-yl(1-pentyl-1H-benzo[d]imidazol-2-yl)methanone, commonly known as JWH-018 benzimidazole;
42. 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone, commonly known as JWH-018 indazole;
43. 1-pentyl-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide, commonly known as JWH-018 adamantyl carboxamide;
44. 1-(5-fluoropentyl)-N-tricyclo[3.3.1.13,7]dec-1-yl-1H-indole-3-carboxamide, commonly known as STS-135.

"Synthetic hallucinogens" means any substance, presented under a variety of street names, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, commonly known as 25I-NBOMe.

"Synthetic stimulants" means any substance, presented under a variety of street names, whether described as bath salts, plant food, room odorizer, or any blend thereof, regardless of whether the substance is marketed for the purpose of human consumption, which contains any one (1) or more of the following chemicals:

1. 3,4-methylenedioxymethcathinone, commonly known as methylone;
2. 3,4-methylenedioxypyrovalerone, commonly known as MDPV;
3. 4-methylmethcathinone, commonly known as mephedrone;
4. 4-methoxymethcathinone;
5. 3-fluoromethcathinone;
6. 4-fluoromethcathinone;
7. 2-ethylamino-1-phenyl-propan-1-one;
8. 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone;

9. 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone;
10. 3,4-methylendedioxyethcathinone;
11. 4-ethyl-methcathinone;
12. 4'-methyl-α-pyrrolidinobutiophenone;
13. 4'-methoxy-alpha- pyrrolidinopropiophenone;
14. 4'-methyl-α- pyrrolidinopropiophenone;
15. 4-methyl-ethylcathinone;
16. 5,6-methylenedioxy-2-aminoindane;
17. alpha-methylamino-butyrophenone;
18. alpha-pyrrolidinobutiophenone;
19. alpha-pyrrolidinopropiophenone;
20. alpha-pyrrolidinovalerophenone;
21. beta-Keto-ethylbenzodioxolylbutanamine;
22. beta-Keto-ethylbenzodioxolylpentanamine;
23. beta-keto-N-methyl-3,4-benzodioxyolybutanamine;
24. naphthylpyrovalerone; and
25. N,N-dimethylcathinone.

B. It is unlawful for any person to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

C. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

D. It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia.

E. Any person found guilty of violating this section shall be punished by a fine of up to five hundred dollars ($500.00) or a jail sentence of not more than ninety (90) days, or both such fine and imprisonment.

F. Paraphernalia, as defined herein, shall be subject to summary forfeiture and shall be destroyed as provided by law in the same manner as controlled substances. (Prior code § 19-58.1)
(Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013; Ord. No. 1066, 5-6-2013; Ord. No. 1076, 7-7-2014)

9.28.020 Possessing one ounce or less of marijuana.

A. It is unlawful for any person intentionally to possess one (1) ounce or less of marijuana, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars (50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses. (Ord. 869 § 3 (part), 2001: Ord. 849, 1998: prior code § 19-58.3
(Ord. No. 1042, 4-4-2011; Ord. No. 1059, 2-4-2013; Ord. No. 1066, 5-6-2013)

9.28.030 Possessing Salvia divinorum.

A. It is unlawful for any person intentionally to possess Salvia divinorum, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars (50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

9.28.040 Sale of Salvia divinorum.

A. It is unlawful for any person to sell Salvia divinorum, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

9.28.050 Possessing synthetic cannabinoids.

A. It is unlawful for any person to possess synthetic cannabinoids, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

9.28.060 Sale of synthetic cannabinoids.

A. It is unlawful for any person to sell synthetic cannabinoids, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

9.28.070 Possessing synthetic stimulants.

A. It is unlawful for any person to possess synthetic stimulants, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

9.28.080 Sale of synthetic stimulants.

A. It is unlawful for any person to sell synthetic stimulants, as defined in Subsection 9.28.010(A).

B. Any person who violates this section shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100.00) and by imprisonment for not more than fifteen (15) days, or both, for the first offense.

C. Any person who violates this section shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), and by imprisonment for not more than ninety (90) days, or both, for the second or subsequent offenses.
(Ord. No. 1042, 4-4-2011)

Chapter 9.32 OBSCENITY

9.32.010 Definitions.

As used in this chapter:

"Adult populace" means all persons eighteen (18) years of age or older at the time of the alleged dissemination of obscene matter.

"Contemporary community standards" means the general conscience, tolerance, customs, habits, practices, morality or social mores of the State adult populace as a whole, in existence at the time of the alleged dissemination of the obscene matters.

"Dissemination" means any exhibition, sale, delivery, transfer or distribution, or an offer or agreement to do the same, of any printed matter, visual representation or depiction containing obscene material, including, but not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, videotapes, plays, acts, dances, shows, public performances, records and recording tapes. "Dissemination" does not mean possession of obscene material by an individual for purely private, noncommercial use in any private dwelling.

Obscene. Matter is "obscene" if it meets all of the following standards:

1. The average person, applying contemporary State community standards, would find that the work, taken as a whole, appeals to the prurient interest; and
2. The work depicts or describes, in a patently offensive way a shameful or morbid interest in sexual conduct which goes substantially beyond customary limits of candor, when:
    a. Representing or describing ultimate sexual acts, normal or perverted, or
    b. Representing or describing masturbations, excretory functions or lewd exhibition of genitals; and

3. The work, taken as a whole, lacks serious literary, artistic, political or scientific value. (Ord. 869 § 3 (part), 2001: prior code § 19-54)

9.32.020 Promoting.

A. No person in the City shall promote obscenity.

B. A person commits the offense of "promoting obscenity" if, knowing its content and character, he or she:

1. Disseminates for monetary consideration any obscene material;
2. Produces, presents or directs obscene performances for monetary consideration; or
3. Participates for monetary consideration in that portion of a public performance which makes it obscene.

C. In any prosecution for violation of this section, it shall be an affirmative defense for the defendant to prove:

1. That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or
2. That the public display was of nudity, exhibited by a bona fide art, antique or similar gallery or exhibition and visible in a normal display setting. (Prior code § 19-55)

Chapter 9.36 WEAPONS

9.36.010 B-B or pellet guns defined.

"B-B or pellet guns" shall be defined as any instrument, whether or not designed as a pistol or rifle, which by reason of its mechanical construction, enables the propelling by force of compressed air or any other means of B-B's, pellets or other metal or hard substance; provided, that B-B or pellet guns whose trajectory or other internal parts have been removed shall not be included in such definition; provided, further, that firearms or other weapons wherein the mechanical construction requires an internal combustion to create an expelling force shall not be included in such definition. (Prior code § 19-8)

9.36.020 B-B or pellet guns—Discharge.

It is unlawful for any person to discharge any B-B or pellet gun within the City limits. (Prior code § 19-9)

9.36.030 B-B or pellet guns—Responsibility of parents and guardians.

Parents, guardians or other persons in loco parentis having control, of children, or persons subject to the provisions of Sections 9.36.010 to 9.36.030, are made responsible for the acts of such children or other persons subject to the provisions of such sections for the possession or the discharge of B-B or pellet guns, and any parent, guardian or person who permits the possession of such B-B gun or pellet gun by a minor child shall be deemed guilty of a misdemeanor. (Prior code § 19-10)

9.36.040 Deadly weapons defined.

"Deadly weapon" means any firearm, whether loaded or unloaded, or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given or with which dangerous thrusts can be inflicted, including sword canes and any kind of sharp pointed canes, and any other weapons with which dangerous wounds can be inflicted. (Prior code § 19-24)

9.36.050 Carrying a deadly weapon defined.

"Carrying a deadly weapon" means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use. (Prior code § 19-25)

9.36.060 Deadly weapon—Unlawful carrying.

No person in the City shall commit unlawful carrying of a deadly weapon.

"Unlawful carrying of a deadly weapon" consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

A. In the person's residence or on real property belonging to him or her as owner, lessee, tenant or licensee;

B. In a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property while traveling;

C. By a peace officer in the lawful discharge of his or her duties.

Nothing in this section shall be construed to prevent the carrying of any unloaded firearm. (Prior code § 19-29)

9.36.070 Deadly weapon—Unlawful possession by felon.

It is unlawful for any convicted felon to possess a deadly weapon, as defined in section 9.36.040, within the City. (Prior code § 19-26.1)

9.36.080 Deadly weapon—Negligent use.

No person in the City shall commit negligent use of a weapon.

"Negligent use of a weapon" consists of:

A. Unlawfully discharging a firearm in the proximity of a building or into any building or vehicle, so as to knowingly endanger a person or his or her property;

B. Carrying a firearm while under the influence of an intoxicant or narcotic;

C. Endangering the safety of another or his or her property by handling or using a firearm or other deadly weapon in a negligent manner; or

D. Selling, loaning or furnishing any deadly weapon to a person with knowledge that the person is under the influence of any intoxicant or narcotic or that the person is incompetent. (Prior code § 19-27)

9.36.090 Unlawful possession of switchblades.

No person in the City shall commit unlawful possession of switchblades. "Unlawful possession of switchblades" consists of any person manufacturing or causing to be manufactured, possessing, displaying, offering, selling, lending, giving away or purchasing any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade which opens or falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement. (Prior code § 19-28)

Chapter 9.40 HOUSING DISCRIMINATION

9.40.010 Policy.

It is the policy of the City to provide, within constitutional limitations, for fair housing throughout the City, and to achieve a condition in which individuals with similar financial resources and interests in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap. (Prior code § 19-9A-1)

9.40.020 Definitions.

As used in this chapter:

"Complainant" means the person (including the chief elected official) who files a complaint under Section 9.40.060.

"Discriminatory housing practice" means those prohibited practices and acts specified in Section 9.40.030.

"Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Familial status" means one (1) or more individuals (who have not attained the age of eighteen (18) years) being domiciled with:

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

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

"Family" includes a single individual.

"Handicap," with respect to a person, means:

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

"Person" includes one (1) or more individuals, corporations, partnerships, associations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, and fiduciaries.

"To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant. (Ord. 823 § 1, 1994: prior code § 9A-2)

9.40.030 Discriminatory housing practice.

A. No person shall:

1. Refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any dwelling to any person, or refuse to negotiate for the sale, rental lease, assignment or sublease of any dwelling to any person because of race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap;

2. Discriminate against any person in the terms, conditions or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap;

3. Print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any notice, statement or advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any dwelling or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap, or an intention to make any such preference, limitation or discrimination;

4. Represent to any person because of race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap that any dwelling is not available for inspection, sale or rental when such dwelling is, in fact, so available.

B. No person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any dwelling shall:

1. Consider the race, religion, color, sex, national origin, ancestry, status, or physical or mental handicap of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance;

2. Use any form or application for financial assistance or make any record or inquiry in connection with applications for financial assistance which expresses, directly, any limitation, specification or discrimination as to race, color, religion, sex, national origin, ancestry, familial status, or physical or mental handicap.

C. No person shall:

1. Aid, abet, incite, compel or coerce the doing of any discriminatory housing practice, or attempt to do so;

2. Engage in any form of threats, reprisal or discrimination against any person who has opposed any discriminatory housing practice or who has filed a complaint, testified or participated in any proceeding under this chapter; or

3. Willfully obstruct or prevent any person from complying with the provisions of this chapter. (Prior code § 9A-3)

9.40.040 Exemption.

Nothing contained in this chapter shall apply to any single-family dwelling sold, leased, subleased or rented by an owner without the making of any notice, statement or advertised with respect to the sale, lease, sublease or rental of the dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, sex, national origin, ancestry familial status, or physical or mental handicap. Any exemption is subject to the following further reservations:

A. To qualify for the exemption the seller must not be an owner of or own or have an interest in more than three (3) single-family dwellings; and

B. If the seller does not presently live in the dwelling or he or she was not the most recent occupant, the exemption granted in this section will only apply to one (1) sale in twenty-four (24) months;

C. Bar any religious or denominational institution or organization which is operated or supervised or controlled by, or is operated in connection with, a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination or from making selections of buyers, lessees or tenants as the organization or denomination may consider necessary to promote religious or denominational principles for which it is established or maintained unless membership in the religious or denominational organization is restricted on account of race, color, sex, national origin, ancestry, familial status, or physical or mental handicap; and

D. Apply to rooms or dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of the living quarters as his or her residence. (Prior code § 9A-4)

9.40.050 Administration.

The City Manager, or his or her designated agent, shall have the responsibility for implementing this chapter. The City Manager may delegate his or her authority to investigate and conciliate complaints to other City employees under his or her direction. (Prior code § 9A-5)

9.40.060 Enforcement.

A. Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the City Manager. Complaints shall be in writing and shall contain such information and be in such form as the City Manager requires. Upon receipt of such a complaint, the City Manager shall furnish a copy of the same to the person or persons who allegedly committed or about to commit the alleged discriminatory housing practice. Within thirty (30) days after receiving a complaint, or within thirty (30) days after the expiration of any period of reference under subsection C of this section, the City Manager shall investigate the complaint and give notice in writing to the person aggrieved whether he or she intends to resolve it. If the City Manager decides to resolve the complaints, he or she shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

B. A complaint under subsection A of this section shall be filed within one hundred eighty (180) days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the City Manager, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

C. If within thirty (30) days after a complaint is filed with the City Manager, the City Manager has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within thirty (30) days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development.

D. If the City Manager has been unable to obtain voluntary compliance within thirty (30) days of the complaint, the person aggrieved may, within thirty (30) days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

E. In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

F. Whenever an action filed by an individual shall come to trial, the City Manager shall immediately terminate all efforts to obtain voluntary compliance. (Prior code § 9A-6)

9.40.070 Investigation.

A. Upon the filing or referral of a complaint as herein provided, the City Manager shall cause to be made a prompt and full investigation of the matter stated in the complaint.

B. Upon completion of the investigation and informal endeavors at conciliation by the City Manager, but within thirty (30) days of the filing of the complaint with the City Manager, if the efforts of the City Manager to secure voluntary compliance have been unsuccessful, and if the City Manager has made a determination that a discriminatory housing practice has in fact occurred, the City Manager shall recommend to the City Attorney that such violation be prosecuted in the municipal court of the City. With such recommendation, the City Manager shall refer his or her entire file to the City Attorney. The City Attorney shall, within thirty (30) days after such referral, make a determination as to whether to proceed with prosecution of such complaint in municipal court. If the City Attorney determines to prosecute, he or she shall institute a complaint and prosecute same to conclusion a within thirty (30) days after such determination or as soon thereafter as practicable. (Prior code § 9A-8)

9.40.080 Cumulative legal effect.

The ordinance codified in this chapter is cumulative in its legal effect and is not in lieu of any and all other legal remedies which the person aggrieved may pursue. (Prior code § 9A-8)

9.40.090 Education and public information.

In order to further the objectives of this chapter, the City Manager may conduct educational and public information programs. (Prior code § 9A-9)

9.40.100 Interference, coercion or intimidation.

It is unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter. This section may be enforced by appropriate civil action. (Prior code § 9A-10)

9.40.110 Violation—Penalty.

Any person, firm or corporation violating any provision of this chapter shall be found guilty of a misdemeanor, and upon conviction, shall be fined a sum not to exceed five hundred dollars ($500.00) for each violation. Any person, firm, or corporation violating any provision of this chapter may be enjoined by a suit filed by the City in a court of competent jurisdiction, and this remedy is in addition to any other penalty provision. (Prior code § 9A-11)

Title 10

VEHICLES AND TRAFFIC

Chapter 10.04 State Motor Vehicle Code Adopted

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10.08.040 Stopping or parking trucks, trailers and other vehicles prohibited in certain places—Maximum time for parking all vehicles.
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Chapter 10.16 Railroads

10.16.010 Definitions.
10.16.020 Speed limits.

Chapter 10.04 STATE MOTOR VEHICLE CODE ADOPTED

10.04.010 Adoption of State law.

Articles 1 through 8 of Chapter 66, New Mexico Statutes, 1978 Compilation, as amended from time to time, including the 1990 amendments, commonly cited as the New Mexico Motor Vehicle Code, are hereby adopted as the City Motor Vehicle Code, except as to those provisions of such statutes which, by their very nature, can have no application. A copy of the New Mexico Motor Vehicle Code shall be available for inspection at the office of the City Clerk during the normal and regular business hours of the City Clerk. (Prior code § 16-11)

10.04.020 Definitions.

Where the State Motor Vehicle Code uses the words "highways" and "roadways," such words shall likewise be applicable to streets and alleys; where such State code uses the word "magistrate," such word shall likewise be applicable to the Municipal Judge; where such State code uses the word "misdemeanor," such word shall likewise be applicable to offenses against the City Motor Vehicle Code. (Prior code § 16-12)

10.04.030 Available for inspection.

The City Motor Vehicle Code shall be available for inspection during the normal and regular business hours at the office of the City Clerk. (Prior code § 16-13)

10.04.040 Violation—Penalty.

Every person who is convicted of a violation of the City Motor Vehicle Code shall be punished as provided in Section 1.16.010, except in those cases where the State Motor Vehicle Code fixes other penalties, which penalties are adopted. (Ord. 846, 1998: prior code § 16-14)

Chapter 10.08 SUPPLEMENTARY TRAFFIC REGULATIONS

10.08.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Authorized emergency vehicle" means vehicles of the Fire Department, police vehicles and ambulances.

"Block" means the length of that portion of any street which is located between two (2) adjacent street intersections.

"Business district" means the territory contiguous to a street or highway when seventy-five (75) percent or more of frontage thereon is occupied by buildings which are in use for business purposes.

"Crosswalk" means that portion of a roadway which lies between the prolongation of the lateral sidewalk or boundary lines over an intersection. Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Driver" means every person who drives or is in actual physical control of a vehicle.

"Intersection" means the area embraced within the prolongations of the lateral curb or boundary lines of two (2) or more streets or highways which join or join and cross one another at an angle.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider designated to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

"Motor vehicle" means every vehicle which is self propelled and every vehicle designed to run upon the highway which is pulled by a self propelled vehicle.

"Official traffic signal" means any device, whether manually or automatically operated, by which traffic is alternately directed to stop and to proceed.

"Park" means to stand a vehicle, whether occupied or not, other than temporarily for the purpose of loading or unloading.

"Parking space" means any space adjacent to a street, which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb and on the street adjacent to the curb. Parallel parking or parking at an angle may be indicated by the lines.

"Parking zone" means any restricted street upon which parking spaces are duly designated by painted lines.

"Pedestrian" means any person afoot.

"Police officer" means every officer of the Municipal Police Department or any officer authorized to direct traffic or to make arrests for violations of traffic regulations.

"Private road or driveway" means every road or driveway not open to the use of the public as a matter of right for purposes of vehicular travel.

"Residence district" means the territory contiguous to a street or highway, not comprising a business district, where seventy-five (75) percent or more of the frontage on such street or highway is mainly occupied by residential dwellings.

"Right of way" means the privilege of the immediate use of the roadway, not inconsistent with regulations and conditions.

"Roadway" means that portion of a street which has been improved and designed for or which is ordinarily used for vehicular travel.

"Sidewalk" means that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, exclusively intended for the use of pedestrians.

"Standing" means any stopping of an occupied or unoccupied vehicle.

"Stop," when required, means complete cessation of movement.

"Stop" or "stopping," when prohibited, means any stopping of a vehicle, except when conflict with other traffic is imminent or when otherwise directed by a police officer.

"Street" or "highway" means the entire area between lateral property lines which open to the use of the public, as a matter of right, for purposes of vehicular traffic.

"Traffic signs" means authorized signs or markers, which are assumed to be permanently or temporarily placed or erected or installed at certain places and which purport to give notice of direction or to convey a prohibition or warning. The presence of such signs, though not compulsory, is generally dictated by necessity or common sense, with a view to furtherance of public safety.

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, excepting those used exclusively upon stationary rails or tracks. (Prior code § 16-15)

10.08.020 Powers of City Managers—Posting of signs.

The City Manager shall be empowered to designate streets or portions of streets lying within the City limits which shall be areas subject to parking limitations, limitations on direction of travel, including one-way streets, restrictions concerning time of parking, prohibited areas, speed zones, school zones, truck routes and any other provisions relating to restrictions on traffic. The designations prepared by the

City Manager as to speed zones, parking areas and other matters relating to traffic in the City shall be in writing and filed with the City Clerk and the Chief of Police. Signs shall be posted relating to parking periods and speed zones, and all signs relating to speed zones and school zones shall be posted at each end of that portion of the street affected thereby. (Prior code § 16-16)

10.08.030 Stopping or parking prohibited in certain places.

It is unlawful for any person to stop or park any vehicle, except when a conflict with other traffic is imminent or when so directed by a police officer, in any of the following places:

A. On a sidewalk in a business or residential district;

B. Within City right-of-way, back of sidewalk or curb, except in designated driveway or parking areas;

C. Within an intersection;

D. On a crosswalk;

E. When signs are placed which prohibit parking or the curbing has been painted yellow by the municipality in lieu of such signs;

F. At any other place in which such stopping or parking is prohibited by the City Motor Vehicle Code. (Ord. 881 (part), 2001: prior code § 16-17)

10.08.040 Stopping or parking trucks, trailers and other vehicles prohibited in certain places—Maximum time for parking all vehicles.

A. It is unlawful for any person to park a tractor trailer rig, freight trailer, bus, hazardous cargo, tank vehicle, semitrailer, recreational vehicle or other vehicle determined to be situated in a location causing a safety hazard in any residential street, alley or public way within the City, except for temporary purposes of loading and unloading.

B. It is unlawful for any person to park any vehicle designed to be pulled by a self-propelled vehicle on any residential street, alley or public way when such vehicle is detached from a self-propelled vehicle, except for temporary purpose of loading and unloading not to exceed twenty-four (24) hours.

C. It is unlawful for any person to park any vehicle in any residential street, alley or public way within the City for a time period in excess of seven (7) continuous days. (Ord. 953, 2006: Ord. 900, 2002: Ord. 884 § 1, 2001: prior code § 16-17.1)

10.08.050 Parking prohibited during certain hours.

It is unlawful for any person to park a vehicle on certain streets when respective signs are placed in such streets indicating that no parking shall be permitted between the hours of 12:00 a.m. and 7:00 a.m.; provided, that this section shall not apply to automobiles or other vehicles, if the owners are at work in the building or on the premises near which such vehicles are parked. (Prior code § 16-18)

10.08.060 Parking time limited to two hours in certain places between 6:00 a.m. and 6:30 p.m.

It is unlawful for any person to park a vehicle longer than two (2) hours, at any time between the hours of 6:00 a.m. and 6:30 p.m., at any place where signs are posted limiting the parking time to two (2) hours, except on Sundays and public holidays. A change of position of a vehicle from one (1) point directly to another point within the same block shall be deemed one (1) continuous parking period. (Prior code § 16-19)

10.08.070 Reserved.

Editor's note—Ord. No. 1039, adopted Feb. 28, 2011, repealed § 10.08.070 which pertained to parking in handicapped zones restricted and derived from the Prior code § 16-19.

10.08.080 Parking in restricted parking zone longer than posted time limitation.

It is unlawful for any person to park or permit to be parked any motor vehicle in a restricted parking zone longer than the time limitation posted either on the curb or by a sign directly adjacent to the curb facing the motorist. (Prior code § 16-20)

10.08.090 Parking between lines where provided.

It is unlawful to park on any street where lines are placed indicating the parking space between cars at any place other than between such lines. (Prior code § 16-21)

10.08.100 Parking perpendicular to curb.

It is unlawful for any person to park any motor vehicle which extends over a curb in excess of two (2) feet perpendicular to such curb. (Prior code § 16-22)

10.08.110 Presumption concerning registered owner.

In any hearing before the Municipal Court or appeal proceeding before the District Court, there shall be a rebuttable presumption that a vehicle shown to have been illegally parked was so parked by the registered owner of the vehicle as shown on the records of the State Department of Motor Vehicles or of a similar agency where registered. (Prior code § 16-22.1)

10.08.130 Corner crossing to avoid traffic-control device.

It is unlawful for any person to drive a vehicle across a corner lot, whether publicly or privately owned, for the purpose of avoiding any traffic-control device or controlled intersection. (Prior code § 16-23.1)

10.08.140 Speed limit in alleys.

It is unlawful for any person to drive any vehicle in any alley in excess of fifteen (15) miles per hour. (Prior code § 16-24)

10.08.150 U turns.

It is unlawful for any person to execute a turn on a street or highway not having a median divider and proceed in the opposite direction on those streets having center lines marked. No driver shall turn his or her vehicle and park the vehicle along the curb opposite the original direction of travel, without first having traveled seventy-five (75) feet in the opposite direction. (Prior code § 16-25)

10.08.160 Motorcycles—Riding prohibited in certain places.

It is unlawful for any person to ride a motorcycle on or over any public sidewalk, any paved or unpaved public property along a street and behind the curb, any unpaved public shoulder of a public road, any utility easement or any other public property, except upon public roadways and alleys, officially designated motorcycle trails and other areas designated and designed for vehicular traffic; or upon any private property within the City, without the prior written consent of the owner of such property, or the owner's agent, carried on the person of such operator at the time and place of such operation. (Prior code § 16-27)

10.08.170 Interference with official traffic-control devices and obstructing vision on lots and tracts.

A. No person shall hide or obscure any official traffic-control device or railroad sign or signals by parking a vehicle or erecting any object or by allowing bushes, hedges, trees or other vegetation to grow so as to obscure traffic-control devices and railroad signals.

B. Unobstructed vision for traffic safety shall be maintained by the property owner or occupant on all lots and tracts.

1. An obstruction includes but is not limited to any sign, fence, ornament, hedge, shrub, tree or display, but it does not include a building presently located upon the premises.

2. No obstruction between three (3) and eight (8) feet above the street level shall be placed or maintained within a triangular area bounded by the street

property lines of a corner lot or tract and a line connecting the points twenty-five (25) feet distant from the intersection of the curb lines of such lot or tract in the case of corner lots and tracts.

3. No obstruction between three (3) and eight (8) feet above the street level shall be placed or maintained in such a manner as to obstruct vision for persons backing out of or emerging from any driveway.

C. Every obstruction interfering with official traffic-control devices or railroad signals or obstructing vision on lots and tracts is a public nuisance, and the City may remove the obstruction or cause it to be removed without notice and assess costs involved to the violator. (Prior code § 16-28)

10.08.180 Violations—Penalties.

Any person found guilty of violating any provision of this chapter shall be punished as provided in Section 1.16.010. (Ord. 884 § 5, 2001: prior code §§ 16-17.2, 16-28)

Chapter 10.12 ABANDONED VEHICLES

10.12.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Abandoned Vehicle and Abandonment. A vehicle is abandoned if it is parked in, on or along any street, highway or alley and the vehicle displays no current license plate and remains in, on or along any street, highway or alley in generally the same place without a valid parking sticker issued by the City pursuant to the provisions of this chapter for a continuous period of seventy-two (72) hours or a vehicle which is voluntarily relinquished by its owner with the intention of terminating the owner's ownership, possession and control in, to and over the vehicle and without vesting ownership in any other person.

"Inoperable vehicle" includes, but is not limited to, any vehicle which is incapable of being driven or moved because of damage, mechanical deficiencies, removal of parts or flat tire(s) or lack of systems essential for the operation of such vehicle and which remains in, on or along any street, highway or alley, or upon any property for a continuous period of seventy-two (72) hours.

"Property" means any real property within the City which is not located within street or highway boundary lines.

"Street," "highway" or "alley" means the entire width between boundary lines of every way open to the use of the public, as a matter of right, for purposes of vehicular travel.

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, street or alley, which shall include, but not be limited to, automobiles, trucks, pick-up trucks, recreational vehicles, trailers and motorcycles. (Prior code § 16-29)

10.12.020 Abandoned or inoperable vehicles—Detriment to the public health and safety—Nuisance.

It is declared that any abandoned or inoperable vehicle constitutes a danger and detriment to the public health and safety and is a nuisance. Failure to abate such nuisance created by an abandoned or inoperable vehicle after notice as provided pursuant to the provisions of this chapter is unlawful. (Prior code § 16-30)

10.12.030 Inoperable vehicles—Abandoned vehicles—Prima facie presumption of intention to maintain unlawful nuisance—Notification of vehicle owner and/or property owner.

If any person permits an inoperable vehicle to remain on property for a period of time in excess of seventy-two (72) hours, or an inoperable or abandoned vehicle to remain on any street, highway or alley for a period in excess of seventy-two (72) hours, it shall be deemed as prima facie evidence of intention to maintain an unlawful nuisance; provided, that such presumption shall have no application where the inoperable vehicle(s) is not visible to the public from any street abutting such property or when such vehicle(s) are stored, off the street, highway or alley, at such place(s) by person(s) engaged in any business relating to repairing, storing, selling or dealing with motor vehicles that holds and displays a valid and current business registration issued by the City for such activity. The City Manager or his or her designee may, but shall not be required to, issue a parking sticker temporarily permitting the parking of vehicles which otherwise would be deemed to be abandoned or inoperable pursuant to the provisions of this chapter on application of any owner or agent of an owner for any vehicle. Parking stickers shall expire fifteen (15) days after issuance. No owner, whether an individual, business, corporation, organization, partnership or trust, is entitled to more than two (2) parking stickers for any one (1) vehicle. (Prior code § 16-31)

10.12.040 Notice, impounding of abandoned or inoperable vehicle and citation.

A. Any vehicle in violation of this chapter shall be deemed unsafe to the public and a nuisance; and the registered owner of such vehicle and/or the property owner or property manager shall be notified, in writing, by the City Manager, or his or her designated agent(s), that unless such vehicle is removed from the street, highway or alley or from the property, where applicable, abating the nuisance within ten (10) days, the vehicle shall be removed and impounded by the City at vehicle owners expense pursuant to the laws of the State of New Mexico and that a citation shall be issued charging the owner of the vehicle and, where applicable, the property owner of violation of this chapter. Such notice shall be served upon the registered owner of the vehicle and, where applicable, upon the owner of the property in accordance with the Rules of Civil Procedure for the District Court of the State of New Mexico, as amended from time to time, for service of process, or if neither a registered vehicle owner nor a property owner can be determined, then by posting such notice conspicuously upon the vehicle itself and, where applicable, upon the property. It shall not be considered an abatement of the nuisance if the abandoned or inoperable vehicle is moved only in such manner that the abandoned or inoperable vehicle still constitutes a nuisance pursuant to the provisions and intent of this chapter.

B. The City may require all vehicles to be removed from any street, highway, alley or City easement at any time for public convenience or planned purposes such as street, highway, alley or easement repair or cleaning, or water line repair, upon twenty-four (24) hours' notice, by way of posting such notice conspicuously upon the vehicle itself and, where applicable, upon the property located adjacent to the vehicle. Upon failure to comply, the City may immediately thereafter remove and impound the vehicle at the sole cost and expense of vehicle owner unless the vehicle and/or adjacent property owner was absent from the City throughout the entire notice period and was not otherwise aware of the notice, in which case the cost of removal and impounding shall be borne by the City. The City shall at all times have the police power to remove any vehicle from any street, highway, alley or easement immediately, without notice, for valid emergency purposes, and shall return such vehicle without cost to the vehicle owner at such time as the emergency has abated.

C. If the registered owner of the vehicle or, where applicable, the owner of the property, after having been notified as provided herein, shall, fail or refuse with the time specified to abate such nuisance, the vehicle shall be removed and impounded

by the City at the expense of the registered vehicle owner and impounded pursuant to the laws of the State of New Mexico; and such failure to abate the nuisance after due notice has been given is declared to be unlawful and a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the City jail for a term of not more than ninety (90) days, or by both such fine and imprisonment. (Ord. 881 (part), 2001: Ord. 814 § 3 (part), 1993: prior code § 16-32)

Chapter 10.16 RAILROADS

10.16.010 Definitions.

For the purposes of this chapter, the following words or phrases shall have the meanings respectively ascribed to them by this section:

"Operator" means any person in charge of manipulating the controls of any railroad locomotive, so as to control the speed and direction of such machine.

"Railroad locomotive" means any steam or diesel electric powered vehicle, or other type of powered vehicle, used primarily to power freight cars or passenger cars over tracks. (Prior code § 22-1)

10.16.020 Speed limits.

A. No operator shall at any time operate a railroad locomotive within the City at a speed in excess of twenty-five (25) miles per hour.

B. No operator shall operate a railroad locomotive within the City at a speed in excess of fifteen (15) miles per hour within two hundred feet (250) of any street crossing, unless such crossing is patrolled by a flagman on duty at the time of such crossing or unless street traffic is controlled by a mechanical or electronic traffic signal that is operational and that is in compliance with the New Mexico Manual and Specifications for a Uniform System of Traffic Control Devices for Streets and Highways. (Prior code § 22-2)

Title 11

RESERVED

Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

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12.04.010 Approval of City Commission required.

No improvement or paving will be done on any streets or alleys without prior approval of the City Commission. (Prior code § 24-6)

12.04.020 Plans and specifications—Registered engineer to draw and submit—Approval of City Commission required.

Plans and specifications for any paving work must be drawn and submitted by an engineer registered in the State. Plans and specifications must be submitted to the City Engineer thirty (30) days before any construction work may begin. The City Commission must give approval of plans and specifications before any work may begin. (Prior code § 24-7)

12.04.030 Plans and specifications—Contents.

The plans and specifications required by this chapter shall include a general layout sheet showing the surrounding area, existing streets and pavement; the paving plans shall show a plan and profile for all work to be done. The plans shall also include all pertinent elevations, general grade elevations at fifty-foot intervals, slope of proposed paving and existing ground line for the proposed paving. The area draining onto the proposed paving area shall be indicated; this may be done on the general layout sheet. The proposed method of disposition of storm water from the proposed paving shall be indicated, with all data that may be required. (Prior code § 24-8)

12.04.040 Plans and specifications—Conformance with standard specifications.

All specifications required by this chapter must be in conformance with the standard specifications filed in the City Engineer's office. (Prior code § 24-9)

12.04.050 Halting of construction for noncompliance.

If the City Engineer shall determine that construction is not being performed in accordance with the approved plans and specifications, he or she is empowered to halt construction forthwith, after notifying the contractor or supervising engineer. All work on such construction shall cease, until the contractor shall comply with the plans and specifications so filed. (Prior code § 24-10)

12.04.060 Testing of materials.

All tests required in the specifications submitted pursuant to this chapter must be made on samples of materials taken by the supervising engineer. All tests other than field tests must be made by a certified testing laboratory, and the City Engineer must be notified of the result of the tests by the laboratory. When samples of materials are to be taken or when field tests are to be made, the City Engineer must be notified. At the discretion of the City Engineer, sampling or testing may be observed by a representative of the City Engineer. The method of sampling must be a method approved by the American Society of Testing Materials or other approved testing method. (Prior code § 24-11)

12.04.070 Utility lines, manholes, valves, valve boxes and storm sewers.

The cost for adjusting any City owned utility lines, manholes, valves, valve boxes or storm sewers will be assumed by the permittee. All lines, manholes, valve boxes and storm sewer inlets that would in any way interfere with the proper construction of the proposed work, and any lines, manholes, valves, valve boxes or storm sewers that would not have the required minimum depth for their adequate protection must be adjusted to City specifications. (Prior code § 24-12)

12.04.080 Conformance of construction methods with City specifications.

The methods of construction used must conform to the methods outlined in the City specifications for construction of street improvements. Any alternate method must be approved by the City Engineer before the method is used. (Prior code § 24-13)

12.04.090 Completion of utility lines, prerequisite to performance of certain other work.

If the construction of utility lines or accessory structures has not been completed in the area to be improved, the contractor may install any curb and gutter and complete grading, excavation, subgrade work and base course before all installations are completed. No further work may be done at specified points until the installation of utility lines has been completed. (Prior code § 24-14)

Chapter 12.08 SIDEWALK CONSTRUCTION

12.08.010 Permit—Required.

It is unlawful for any person to construct, improve, repair or alter any sidewalk adjacent to any street or alley without having first secured a permit, issued by the

City to and in the name of the owner of the adjacent property on application by such owner. (Prior code § 24-15)

12.08.020 Permit—Fees.

All persons securing permits under the provisions of this chapter shall pay to the City the following fees:

A. Construction cost to $1,000.00 ..... $10.00

B. Construction cost over $1,000.00 ..... $15.00

(Ord. 870 (part), 2001: prior code § 24-16)

12.08.030 Specifications generally.

All sidewalks constructed, improved, repaired or altered must conform with the grade, width, location and construction methods and materials as established by the Engineering Department of the City, and such construction shall be approved by the Engineering Department. Sidewalks so constructed must extend the total length and width of any lot or area that abuts the street. Where a permit has been issued to construct, improve, repair, alter or remove a commercial building, sidewalks shall be constructed in accordance with such specifications established by the Engineering Department; provided, that if existing sidewalks conform with such specifications, no additional construction will be required; provided, further, that sidewalk construction will only be required in areas where curbs and gutters have been constructed. Authority to commence construction shall be evidenced by the issuance of a permit, as set forth in Section 12.08.010. (Prior code § 24-17)

12.08.040 Sidewalk required for new construction.

Any person erecting a new building shall be required to install a sidewalk adjacent to the street, in accordance with the requirements established by the Engineering Department; provided, that on corner lots sidewalks shall be constructed along both intersecting streets to the next adjacent property. (Prior code § 24-18)

12.08.050 Abatement of sidewalk constructed in violation of chapter as nuisance—Lien.

Any sidewalk constructed in violation of this chapter shall be deemed a nuisance and shall be abated by the City against the owner of the property upon which such sidewalk abuts and adjacent to the construction of such sidewalk. The City may proceed to reconstruct such sidewalk in conformity with the grade, width, location

and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature. For sidewalks with tripping hazards, the City may address this under a policy to remediate these hazards. (Ord. 870 (part), 2001: prior code § 24-19)

Chapter 12.12 SIDEWALK OBSTRUCTIONS

12.12.010 Obstructing sidewalks—Generally.

It is unlawful for any person to obstruct any sidewalk within the City, by the displaying thereon of goods, signs, merchandise, parking vehicles, or in any other manner. (Ord. 870 (part), 2001: prior code § 24-1)

12.12.020 Permanent obstructions.

No steps, landings or porches, handrails or any other obstruction may be placed or constructed on a sidewalk or sidewalk area, except in conformance with the building code. (Prior code § 24-2)

12.12.030 Obstructions existing when sidewalk constructed or repaired declared nuisances.

Whenever a sidewalk in the City is constructed or repaired, all existing signs, steps, landings or other obstructions are declared to be unlawful and a nuisance and shall be removed by the owner of such property forthwith or abated in the manner provided by Section 12.12.040. (Prior code § 24-3)

12.12.040 Abatement of nuisances—Lien.

Any obstruction of sidewalks as set forth in Sections 12.12.010 to 12.12.030 shall be deemed a violation of this chapter and a nuisance and shall be abated by the City against the owner of the property upon which such sidewalk abuts and adjacent to construction of such sidewalk. The City may proceed to reconstruct such sidewalk in conformity with the grade, width, location and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature. (Prior code § 24-4)

Chapter 12.16 CURBS, GUTTERS AND DRIVEWAYS

12.16.010 Conformance with construction plans and specifications generally.

All curbs, gutters and driveways constructed in the City must conform with the standard details and specifications for construction of driveways, curbs and gutters as approved by the City Commission and on file in the office of the City Engineer. (Prior code § 24-29)

12.16.020 Driveways and gutter sections made by removal of curbs.

All driveways and gutter sections made by the removal of any curb must conform with the standard details and specifications for construction of driveways, curbs and gutters on file in the office of the City Engineer. (Prior code § 24-30)

12.16.030 Permit for removal or alteration.

Before any curb may be removed or any gutter or driveway altered, approval of such removal or alteration must be secured from the City Engineer, and such approval must be evidenced by a permit issued by the City Engineer. (Prior code § 24-31)

12.16.040 Abatement as nuisance of curb, driveway or gutter constructed or removed in violation of chapter—Lien.

Any curb, driveway or gutter constructed or removed in violation of this chapter shall be deemed a nuisance and shall be abated by the City against the owner of the property upon which such curbs, gutters or driveways abut and adjacent to the construction of such curbs, gutters or driveways in conformity with the grade, width, location and construction requirements established by the Engineering Department, and the costs thereof shall be chargeable to the owner of such property. In such event, the City shall have a lien upon the property affected for the expense of such reconstruction, and such lien may be enforced and foreclosed as are other liens of like nature. (Prior code § 24-32)

Chapter 12.20 DITCHES AND PIPELINES

12.20.010 Maintenance of ditches and drains.

All ditches, gutters and drains used for conducting water within the City limits shall be so used and controlled as to prevent any overflow or flood upon any of the public

highways, streets or alleys. Such ditches, drains and gutters used for water shall be kept in good order by the party using the same, and such ditches shall be kept clean and with a public outlet for the water running through the same; provided, that this section shall not apply to water or ditches used for City purposes or in which the City has any use, it being the duty of the City to keep such ditch in good and proper condition. (Prior code § 24.20)

12.20.020 Excavations—Permit required.

It is unlawful for any person to lay, construct, repair or alter any pipeline or engage in the digging, excavation or construction of any ditch or trench across any street or alley in the City, without having first obtained a permit from the City Manager to so lay, construct, repair or alter any such pipeline or dig, excavate or construct any such ditch or trench. (Prior code § 24-21)

12.20.030 Excavations—Assessment of costs—Refund of money paid in excess of actual construction costs—Exemptions.

Whenever any person shall apply to the City Engineer or his or her authorized agent for a permit to lay, construct, repair or alter any pipeline or to dig, excavate or construct any ditch or trench across or under any street or alley in the City, he or she shall pay in advance to the City a sum of money equivalent to the actual cost of the digging, excavating, repairing and restoring of such street or alley and the improvements thereon. The City Engineer or his or her authorized agent shall estimate the actual cost of such excavation and repair, and in the event the estimate determined by the City Engineer or his or her authorized agent is more than the actual cost of such excavation and restoration, the City will refund to the applicant all money paid in excess of the actual cost of excavation, restoration and repair; provided, that the excavation, restoration and repair of such street or alley shall be under the supervision of the City Engineer; provided, further, that the holder of a duly adopted and valid franchise authorizing the holder to use or occupy public streets, highways or alleys or to install, lay and maintain his or her lines, pipelines and equipment shall be exempt from the provisions of this chapter, if he or she files with the City Engineer or his or her authorized agent a daily report designating the location of any excavations or constructions made in any public streets, highways or alleys; and provided, further, that such franchise holder shall restore or have restored as nearly as possible to its original condition, at his or her own expense, such thoroughfare or other surface which may have been disturbed, within a reasonable time after the completion of such construction or excavation, subject to approval by

the City Engineer or his or her authorized agent as to the adequacy and completeness of such restoration; and provided, further, that in the event any franchise holder shall intend to perform any further excavation involving a paved street, highway or alley, he or she shall notify the City Engineer or his or her authorized agent of such intent, and the excavation and restoration thereof shall be performed by or under the supervision of the City at the expense of such franchise holder. (Prior code § 24-22)

12.20.040 Appeals.

Any person aggrieved by a decision of the City Manager or the City Engineer arising by virtue of the provisions of this chapter shall have the right to appeal such decision to the City Commission. The decision by the City Commission shall be final. Any appeal from the decision of the City Manager or the City Engineer shall be filed with the City Clerk within ten (10) days after rendition of such decision of the City Manager or the City Engineer. (Prior code § 24-23)

12.20.050 Violations—Penalties.

Any person violating the provisions of Sections 12.20.020 through 12.20.040 shall be deemed guilty of a misdemeanor and shall be assessed the actual cost to the City for the repair or replacement of any street or alley damaged by reason of the violation of any provision of this chapter. (Prior code § 24-24)

12.20.060 Removal and relocation of lines or mains—Approval of construction plans and specifications.

No oil, gas, water, sewer or other lines or mains may be constructed within the confines of the right-of-way limits of any streets or alleys within the City limits, unless the plans and specifications for such lines or mains have been submitted to the City Engineer for review and recommendation for approval by the City Commission. (Prior code § 24-25)

12.20.070 Authority to require removal or relocation of lines or mains.

Whenever, in the opinion of the City Commission, expressed by a resolution duly adopted, any oil, gas, water or sewer or other lines or mains within the right-of-way limits of the streets and alleys of the City shall be or become an interference, obstruction or jeopardy to paving construction or other improvements of the streets or alleys of the City, the City Commission may require the removal, raising, lowering or relocation of such lines or mains. (Prior code § 24-26)

12.20.080 Removal and relocation of lines or mains—Notice to owner—Time for compliance with notice or request for hearing—Performance of work by City—Lien.

Whenever a resolution shall have been adopted by the City Commission as provided in Section 12.20.070, it shall be the duty of the City Manager to notify the owner or agent in charge of such oil, gas, water, sewer or other lines or mains of the adoption of such resolution by serving a copy thereof upon him or her. In the event that such owner or agent in charge cannot be found or served within the City as provided in this section, such notice may be completed by publication of such resolution one (1) time in a newspaper of general circulation within the City. Such owner or agent in charge shall thereafter, within a reasonable time, not less than ten (10) days, remove, raise, lower or relocate such lines or mains. If such removal, raising, lowering or relocation is not commenced by such owner or a written objection filed with the City Clerk asking a hearing within ten (10) days after the service of such notice or publication of such resolution, the City shall have the power to remove, raise, lower or relocate such oil, gas, water, sewer or other lines or mains at the cost and expense of such owner, and the reasonable cost thereof shall constitute a lien against such property for such removal, raising, lowering or relocation and shall be foreclosed in the same manner provided for the foreclosures of municipal liens as provided by Chapter 14, Article 35, New Mexico Statutes, 1953 Compilation. (Prior code § 24-27)

12.20.090 Removal and relocation of lines or mains—Hearing—Appeal to district court.

In the event that any owner or agent in charge of any oil, gas, water, sewer or other lines or mains within the right-of-way limits of the streets and alleys files a protest and asks for a hearing within ten (10) days of the service of the notice as provided for in Section 12.20.100, the City Commission shall fix a day for hearing and shall consider the evidence submitted for and against such removal, raising, lowering or relocation order and determine whether or not its previous action shall be enforced or rescinded. If it is determined that such order shall be enforced and the owner or agent in charge shall fail, for a period of five (5) days, to comply with such order, the City may proceed in the same manner as provided in Section 12.20.080 for such removal, raising, lowering or relocation of such lines or mains; provided, that any person aggrieved by the order of the City Commission shall have the right to appeal to the district court by giving notice of appeal to the City Commission within five (5) days after such order and filing his or her petition in the

district court within thirty (30) days thereafter. (Prior code § 24-28)

Chapter 12.24 PARADES

12.24.010 Short title.

This chapter can be referred to or cited as the "City Parade Ordinance." (Prior code § 24-39)

12.24.020 Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them this section:

"Parade" means any parade, march, ceremony, show, exhibition, pageant or procession of any kind, or any similar display, in or upon any street, sidewalk, park or other public place in the City.

"Permit" or "parade permit" means the permit required by Section 12.24.030. (Prior code § 24-41)

12.24.030 Permit—Required.

No person shall engage in, participate in, aid, form or start any parade unless a parade permit shall have been obtained first from the Chief of Police of the City Police Department. (Prior code § 24-41)

12.24.040 Permit—Exceptions.

Section 12.24.040 shall not apply to:

A. A funeral procession;

B. Students going to or from school classes or participating in educational activities, providing such activity is under the immediate direction and supervision of the proper school authorities;

C. A governmental agency acting within the scope of its functions; and

D. Sidewalk processions which do not interfere with the usual pedestrian traffic and use no more than one-half (1/2) the sidewalk. (Prior code § 24-42)

12.24.050 Permit—Application.

A. Filing With Chief of Police. A person seeking issuance of a parade permit shall file an application with the Chief of Police on forms provided by that officer.

B. Filing Period. An application for a parade permit shall be filed with the Chief of Police not less than ten (10) days nor more than on hundred eighty (180) days before the date on which it is proposed to conduct the parade.

C. Contents. The application for a parade permit shall set forth the following information:

1. The name, address and telephone number of the person seeking to conduct such parade;
2. If the parade is proposed to be conducted for, on behalf of, or by organization, the name, address and telephone number of the headquarters of the organization and of the authorized and responsible heads of such organizations;
3. The name, address and telephone number of the person who will be the Parade Chairperson and who will be responsible for its conduct;
4. The date when the parade is to be conducted;
5. The route to be traveled, the starting point and the termination point;
6. The approximate number of persons who and animals and vehicles which will constitute such parade; the type of animals and description of the vehicles;
7. The hours when such parade will start and terminate;
8. A statement as to whether the parade will occupy all or only a portion of the width of the streets proposed to be traversed;
9. The location by streets of any assembly areas for such parade;
10. The time at which units of the parade will begin to assemble at any such assembly area or areas;
11. The interval of space to be maintained between units of such parade;
12. If the parade is designed to be held by and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the Chief of Police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his or her behalf;
13. Any additional information which the Chief of Police shall find reasonably necessary to a fair determination as to whether a permit should be issued; and

14. The names, addresses and telephone numbers of persons who will act as parade marshals and who will be responsible for the conduct of portions or units of the parade and designating the portion or unit of the parade for which each is responsible. (Prior code § 24-43)

12.24.060 Permit—Standards of issuance.

The Chief of Police shall issue a permit if, upon considering the contents of the application and such other information as he or she may otherwise obtain, he or she finds that:

A. The time, duration, route and size of the parade will not unreasonably disrupt the movement of traffic;

B. The parade or assembly is of the size and nature such that it will not require the diversion of so great a number of police officers of the City to properly police the line of movement or assembly area or the areas contiguous thereto as to prevent reasonable police protection to the balance of the City;

C. The concentration of persons, animals and vehicles at the assembly points of the parade will not duly interfere with the proper fire or police protection of or ambulance service to areas contiguous to such assembly areas;

D. The parade will not cause such a concentration of persons, animals or vehicles, or a combination thereof, such as to prevent proper police, fire and ambulance services to the parade area or areas contiguous thereto;

E. The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays on route;

F. The parade or assembly will not interfere with another parade or assembly for which a permit has been granted;

G. The parade is not to be held for the sole purpose of advertising any product, goods or event and is not decided to be held purely for private benefit;

H. The conduct of the parade is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or to create a disturbance;

I. The permittee has provided for a sufficient number of parade marshals to control the orderly conduct of the parade or assembly in conformity with the parade permit. (Prior code § 24-44)

12.24.070 Permit—Notice of action taken on application.

Within three (3) days after the filing of the application as required by this chapter, the Chief of Police shall mail to the applicant a notice stating that:

A. The application has been approved; or

B. The application will be approved upon the posting of a bond with the City, stating the specific reasons a bond will be required and stating the amount of the bond based on a fair estimate of the amount required to indemnify the City for the cost incurred in maintaining the additional manpower necessary to secure, control, protect and manage the proposed parade; or

C. The application is denied and stating in detail the exact reasons for such denial. (Prior code § 24-45)

12.24.080 Permit—Appeal procedure.

Any person aggrieved shall have the right to appeal the action taken by the Chief of Police to the City Commission. The appeal shall be taken within fifteen (15) days after the notice of the decision of the Chief of Police. The City Commission shall act upon the appeal at its next regularly scheduled meeting, but not later than twenty (20) days from the time of receipt of the appeal. (Prior code § 24-46)

12.24.090 Alternative permit.

The Chief of Police, in denying an application for a permit, may notify the applicant that an alternative permit will be issued authorizing the conduct of a parade on a date, at a time, over a route or in some other manner different from that specified in the application. An applicant desiring to accept an alternative permit shall, within three (3) days after notice of the action of the Chief of Police, file a written notice of acceptance with the Chief of Police. An alternative permit shall conform to the requirements of and shall have the effect of a parade permit under this chapter. (Prior code § 24-47)

12.24.100 Permit—Contents.

Each parade permit shall state the following information:

A. Starting time;

B. Minimum speed;

C. Maximum speed;

D. Maximum interval of space to be maintained between the units of the parade;

E. The portions of the street to be traversed that may be occupied by the parade;

F. The maximum length of the parade in miles or fractions thereof;

G. Such other information, conditions and directions as may be included by the Chief of Police to ensure that the parade will be conducted in conformance with the standards of issuance provided in Section 12.24.060. (Prior code § 24-48)

12.24.110 Duties of permittee.

A permittee hereunder shall ensure that:

A. The Parade Chairman or other person heading or leading such activity shall carry the parade permit upon his person during the conduct of the parade;

B. The parade is conducted in compliance with all permit directions and conditions; and

C. The parade is conducted in compliance with applicable laws and ordinances. (Prior code § 24-49)

12.24.120 Public conduct during parades.

A. Interference. No person shall unreasonably hamper, obstruct, impede or interfere with any parade or with any person, vehicle or animal participating or used in a parade.

B. Driving Through Parades. No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade. (Prior code § 24-50)

12.24.130 Revocation of permit.

The Chief of Police shall have the authority to revoke a parade permit issued hereunder when:

A. There occurs any violation of the standards of issuance as set forth in Section 12.24.060;

B. The information contained in the application for a parade permit is found to be false in any material detail;

C. The permittee, Parade Chairman, any parade marshal or other participant in such parade shall violate any applicable law or ordinance. (Prior code § 24-51)

12.24.140 Violations—Penalties.

Anyone violating any of the provisions of this article shall be guilty of a misdemeanor. (Prior code § 24-52)

Chapter 12.28 CITY PARKS AND RECREATION FACILITIES

12.28.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Park" means any area dedicated for use as a place of public resort, maintained for public use and laid out for the use of the public as a place of rest, exercise, pleasure and enjoyment.

"Pavilion" means a park shelter facility that provides seating to at least thirty-five (35) people.

"Recreation area" means any activity area set aside for the use of specific recreational activities such as team sports, including, but not limited to, baseball and softball fields, multipurpose fields and soccer fields.

"Special events" means any non-City-sponsored event held in a park or recreational area that encourages the assembling of the public to celebrate, commemorate, observe or participate in the event. Events that require equipment, apparatus, amenities or facilities that are not standard or normally provided to the public may be considered a special event and thus require permitting.

"Sports" events" means scheduled league games, tournaments, scrimmages, and practice sessions of competitive team sports, including, but not limited to, baseball, softball, basketball and soccer. (Prior code § 20-2)

12.28.020 Parks locations and names.

All park locations, names, and legal descriptions for City-owned parks shall be retained on file with the clerk's office. (Prior code § 20-3)

12.28.030 Swimming pools—Rules, regulations and fees generally.

Rules regarding use of the pools will vary according to each individual pool. All regulations regarding the use and policies of the two (2) municipally owned pools shall be established by the Director of Parks and Recreation, with advisement of the Park Board, subject to the approval of the City Manager. All regulations regarding the use and policies of the Demarious Badger Natatorium shall be established by the Director of Parks and Recreation subject to the approval of the City Commission according to joint use agreements formally adopted by the governing bodies of the City and the Hobbs Municipal Schools. The establishment or revision of appropriate fees for all swimming pools must receive approval of the City Commission by resolution as developed by City staff with advisement of the Park Board. (Prior code § 20-4)

12.28.040 Agnes Kastner Head Community Center—Rules, regulations and fees generally.

All regulations regarding the use and policies of Agnes Kastner Head Community Center shall be established by the parks and recreation division, with advisement of the Park Board, and are subject to the approval of the City Manager. The establishment or revision of appropriate fees for Agnes Kastner Head Community Center must receive approval of the City Commission by resolution as developed by City staff with advisement of the Park Board. (Prior code § 20-5)

12.28.050 John J. Fletcher, Jr. Multi-Purpose Center—Rules, regulations and fees generally.

All regulations regarding the use and policies of John J. Fletcher, Jr. Multi-Purpose Center shall be established by the parks and recreation division, with advisement from the Park Board, and are subject to the approval of the City Manager. The establishment or revision of appropriate fees for the multi-purpose center must receive approval of the City Commission by resolution as developed by City staff with advisement from the Park Board. (Prior code § 20-6)

12.28.060 Seasonal recreation—Rules, regulations and fees generally.

All regulations regarding the use and policies of seasonal recreational programs shall be established by the parks and recreation division, with advisement from the Park Board, and are subject to the approval of the City Manager. All seasonal recreational fees may be established or revised upon recommendation by City staff, with advisement from the Park Board, and approved by the City Manager.

Fees shall apply to specialty classes and programs, athletic field marking, and adult participation. (Prior code § 20-7)

12.28.070 Special events—Rules, regulations and fees generally.

All rules, regulations and policies regarding special event permitting shall be established by the parks and recreation division, with advisement from the Park Board, and are subject to approval by the City Commission and City Manager. The establishment or revision of appropriate fees associated with special events permitting must receive approval of the City Commission by resolution as developed by City staff with advisement from the Park Board. It is unlawful for a special event, as defined in Section 12.28.010 to be held without a permit. Events in violation are subject to disbanding by law enforcement officials. (Prior code § 20-8)

12.28.080 Pavilion reservation—Rules, regulations and fees generally.

All rules, regulations and policies regarding pavilion reservations shall be established by the parks and recreation division with advisement from the Park Board, and are subject to approval by the City Manager. The establishment or revision of appropriate fees for pavilion reservations must receive approval of the City Commission by resolution as developed by City staff with advisement of the Park Board. It is unlawful for individuals to refuse to relinquish occupancy of a facility when presented with approved reservation documentation. (Ord. 937 § 1, 2005; prior code § 20-9)

12.28.090 Harry McAdams Park—Rules, regulations and fees generally.

All rules, regulations and policies regarding Harry McAdams Park shall be established by the City staff with advisement from the Park Board, and are subject to approval by the City Manager.

The establishment or revision of appropriate user fees must receive approval of the City Commission by resolution as developed by City staff with advisement of the Park Board. (Ord. 850, 1998: prior code § 20-9.1)

12.28.100 Rockwind Community Links—Rules, regulations and fees generally.

All rules, regulations and policies regarding the Rockwind Community Links shall be established by the golf professional and are subject to approval by the City Manager. The establishment or revision of appropriate fees of Rockwind Commu-

nity Links must receive approval of the City Commission by resolution. (Prior code § 20-10)
(Ord. No. 1077, 10-6-2014)

Editor's note—See § 12.28.115 regarding change in facility name from Ocotillo Park Golf Course to Rockwind Community Links.

12.28.110 Fees generally.

Revision of all fees except seasonal recreational fees shall be established by resolution after discussion of the fees at an earlier regular commission meeting. (Prior code § 20-11)

12.28.115 Change of name from Ocotillo Park Golf Course to Rockwind Community Links.

The facility currently known as Ocotillo Park Golf Course and previously referred to as Ocotillo Park Golf Course throughout the Hobbs Municipal Code shall now be known as Rockwind Community Links. All references to Ocotillo Park Golf Course throughout any City-related documents, contracts, resolutions, ordinances, etc. prior to the date Ordinance No. 1077 is passed shall be understood to apply to Rockwind Community Links in the same manner they applied to Ocotillo Park Golf Course. In addition, all references to Ocotillo Park Golf Course throughout the Hobbs Municipal Code shall be changed to Rockwind Community Links.
(Ord. No. 1077, 10-6-2014)

12.28.120 Alcoholic beverages.

It is unlawful for any person to bring, drink or use alcoholic beverages in a park or recreation area. This section does not apply to Hobbs Industrial Air Park, Rockwind Community Links, and the John J. Fletcher, Jr. Multi-Purpose Center when all other alcohol-related ordinances, restrictions and regulations are complied with. (Prior code § 20-12) (Ord. No. 1077, 10-6-2014)

Editor's note—See § 12.28.115 regarding change in facility name from Ocotillo Park Golf Course to Rockwind Community Links.

12.28.130 Controlled substances, glue and spray paint.

It is unlawful for any person to use or bring a controlled substance, glue, or spray paint at anytime into a park or recreation area. (Prior code § 20-13)

12.28.140 Intoxicated persons.

It is unlawful for any intoxicated person or an individual under the influence of alcohol, controlled substances, glue, or spray paint to be in a park or recreation area. An intoxicated person means any natural person who is apparently so intoxicated in a public place that he or she has become disorderly or has become unable to care for his own safety. (Prior code § 20-14)

12.28.150 Fireworks.

It is unlawful for any person to have in his or her possession or set off any fireworks in a parks or recreation area. Permits may be given for conducting properly supervised fireworks programs in designated park and recreation areas; provided, that such fireworks programs have been approved by the Fire Department. (Prior code § 10-15)

12.28.160 Park and recreation closing hours—Being in parks or recreation areas after closing hours or without authorization—Scheduling of sports events.

A. It is unlawful for any person to be in any park or recreation area during the hours the park or recreation area is closed or to use or be in any recreation area without authorization from the parks and recreation division; provided, that law enforcement officers in the lawful performance of their duties are excepted from this restriction.

B. The parks and recreation division shall have the authority to schedule the use of recreation areas for sports events, and only those participants who have been properly scheduled may use or be in the recreation area.

C. Closing hours will be posted at all parks and recreation areas. The parks and recreation division may, upon proper application, authorize a variance to the closing hours. (Prior code § 20-16)

12.28.170 Prohibited activities that shall be deemed unlawful generally.

A. No person shall mark, deface, disfigure, injure, tamper with or displace or remove any buildings, tables, benches, fireplaces, railings, paving or paving materials, water lines or other public utilities or parts or appurtenances thereof, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts or other boundary markers, or other structures or equipment, facilities or park property or appurtenances, either real or personal.

B. No person shall damage, cut, carve, mark, transplant or remove any plant, or injure the bark or pick flowers or seed of any tree or plant, dig in or otherwise disturb grass area or in any other way injure the natural beauty or usefulness of any area.

C. No person shall hunt, molest, harm, frighten, kill, trap, pursue, chase, tease, shoot or throw missiles at any animal, wildlife, reptile or bird, nor shall he or she remove or have in his or her possession the young of any wild animal or the eggs or nest or young of any reptile or bird. Exception to the foregoing is made in that snakes known to be deadly poisonous may be killed on sight.

D. No person shall ride or lead a horse or any other animal that may damage any structure or is potentially dangerous to the public in any park or recreation area.

E. No person unless authorized shall ride a bicycle, motorcycle or motor vehicle of any kind (except for handicapped personal transports) within any park or recreation area, except those areas specifically designated and marked for parking and driving.

F. No person shall carry a deadly weapon as defined in Section 9.36.040.

G. No person shall engage in any other activities or events which the City prohibits in order to insure public peace and safety in the City parks system and as otherwise have been so designated by signs or other notices posted to inform the public of such prohibited activities. (Prior code § 20-17)

Chapter 12.32 CEMETERIES

12.32.010 Boundaries—Prairie Haven Cemetery.

The cemetery located on the following described land is named Prairie Haven Cemetery:

A tract of land located in the northeast quarter of Section 11, Township 19 South, Range 38 East, N.M.P.M., Hobbs, Lea County, New Mexico, and being more particularly described as follows:

A tract being the east half of the northeast quarter of the northeast quarter of such Section 11. Such tract contains twenty (20) acres, more or less. (Prior code § 8-1)

12.32.020 Boundaries—Prairie Haven Memorial Park.

The cemetery located on the following described land is named Prairie Haven Memorial Park:

A tract of land located in the east half of the southeast quarter of Section 2, Township 19 South, Range 38 East, N.M.P.M., Hobbs, Lea County, New Mexico, and being more particularly described as follows:

A tract being the southeast quarter of the southeast quarter of such Section 2 and the south half of the northeast quarter of the southeast quarter of such Section 2. Such tract contains sixty (60) acres, more or less. (Prior code § 8-2)

12.32.030 Boundaries—Everglade Cemetery.

The cemetery located on the following described property is named Everglade Cemetery:

A tract of land beginning at the northwest corner of the northeast quarter of the northwest quarter of the southeast quarter of Section 11, Township 19 South, Range 38 East, thence south six hundred (600) feet, east four hundred sixteen (416) feet, north six hundred (600) feet, west four hundred sixteen (416) feet, to the point of beginning. (Prior code § 8-3)

12.32.040 Boundaries—Boone Cemetery.

The cemetery located on the following described property is named Boone Cemetery:

A tract of land located in the southeast quarter of Section 22, Township 18 South, Range 38 East, N.M.P.M., Hobbs, Lea County, New Mexico, and being more particularly described as follows:

A tract beginning at a point being north 0°01' west 506.70 feet and north 89°5601' west 125.00 feet from the southeast corner of such Section 22; thence north 89°5601' west 371.70 feet; thence south 0°01 east 243.70 feet; thence south 89°5601' east 371.70 feet; thence north 0°0101' west 20.00 feet; thence south 89°5601' east 24.00 feet; thence north 0°0101' west 24.00 feet; thence north 89°5601' west 24.00 feet; thence north 0°0101' west 199.70 feet to the point of beginning. Such tract contains 2.09 acres, more or less. (Prior code § 8-4)

12.32.050 Authority to convey title to lots and tracts.

The Mayor is authorized to execute deeds conveying title to purchasers of cemetery lots and tracts, to be attested by the City Clerk. (Prior code § 8-5)

12.32.060 Lot prices and fees.

Prairie Haven Memorial Park

Infant lot, including $30.00 maintenance fee	$145.00
Adult lot, including $30.00 maintenance fee	605.00
Lot opening and closing	*430.00
*Opening and closing fees include:	
Opening and closing	$400.00
Maintenance	30.00
Saturday and/or City observed holiday service additional fee	400.00
Cremains	90.00
Permit for setting double monument	30.00
Mausoleum lot (ten-foot minimum) per front foot	50.00
Disinterment	500.00
Chapel (per hour)	50.00

Memorial service only with burial in any cemetery other than Prairie Haven Memorial, Prairie Haven, Everglade and Boone Cemeteries.

Prairie Haven Memorial Park
Columbarium

Cremains—12"×12" niche, including $30.00 maintenance fee	$530.00
Placement fees include:	
Placement	$500.00
Perpetual care fee	30.00
Saturday and/or City observed holiday service additional fee	400.00

**Each niche will be allowed two (2) cremains, each requiring a $500.00 placement fee and $30 perpetual care fee

Prairie Haven, Everglade and Boone Cemeteries

Cremains	$90.00
Permit for setting double monument	30.00
Mausoleum lot (ten-foot minimum) per front foot	50.00
Disinterment	500.00

Prairie Haven Cemetery

Veteran's lot, including $30.00 maintenance fee	$605.00
Lot opening and closing	*430.00

*Opening and closing fees include:

Opening and closing	$400.00
Maintenance	30.00

(Prior code § 8-6; Ord. No. 1074, 7-7-2014)

12.32.070 Infant lots and adult lots defined.

"Infant lots" are plots of ground of the dimensions of three (3) feet by six (6) feet and located in an area as may, from time to time, be designated by the Cemetery Board. All other burial plot shall be classified as "adult lots." (Prior code § 8-7)

12.32.080 Regulations not specifically set out in chapter.

All regulations not specifically set out in this chapter regarding the use of and policies regarding the four (4) municipally owned cemeteries shall be at the discretion of the Parks Director, subject to the approval of the City Manager. (Prior code § 8-8)

12.32.090 Fee revision.

All fees as specifically set forth in this chapter may be revised upon recommendation by the City Manager and approved by resolution of the City Commission. (Prior code § 8-9)

Chapter 12.36 AIRPORT ZONING

12.36.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Airport" means Hobbs Industrial Air Park.

"Airport elevation" means the established elevation of the highest point on the usable landing area.

"Airport hazard" means any structure, tree or use of land which obstructs the airspace required for, or which is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport.

"Airport reference point" means the point established as the approximate geographic center of the airport landing area and so designated.

"Board of Appeals" means a board consisting of five (5) City Commission members appointed by the Mayor with the consent of the City Commission, as provided in Section 3-39-22, New Mexico Statutes Annotated, 1978 Compilation.

Height. For the purpose of determining the height limits in all zones set in this chapter and shown on the zoning map, the datum shall be mean sea level elevation, unless otherwise specified.

"Instrument runway" means a runway equipped or to be equipped with a precision electronic navigation aid or landing aid or other air navigation facilities suitable to permit the landing of aircraft by an instrument approach under restricted visibility conditions.

"Landing area" means the area of the airport used for the landing, taking off or taxiing of aircraft.

"Nonconforming use" means any preexisting structure, tree, natural growth or use of land which is inconsistent with the provisions of this chapter or an amendment thereto.

"Noninstrument runway" means a runway other than an instrument runway.

"Runway " means the paved surface of an airport landing strip.

"Structure" means an object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.

"Tree" means any object of natural growth. (Prior code § 3-1)

12.36.020 Zones established and defined—Zoning map.

In order to carry out the provisions of this chapter, there are created and established certain zones, which include all of the land lying within the instrument approach zone, noninstrument approach zone, transition zone, horizontal zone and conical zone. Such area and zones are shown on the Crossroads Intercontinental Airport (Hobbs Industrial Air Park) Zoning Map, consisting of one (1) sheet, prepared by Don Bell, City Engineer, and dated October 2, 1970, a copy of which is on file in the office of the City Clerk and which is made as much a part of this chapter as though the same were set forth in full herein. The various zones are established and defined as follows:

A. Instrument Approach Zone. An instrument approach zone is established at each end of the instrument runway for instrument landings and takeoffs. The instrument approach zone shall have a width of one thousand (1,000) feet at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of sixteen thousand (16,000) feet at a distance of fifty thousand two hundred feet (50,200) beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

B. Noninstrument Approach Zone. A noninstrument approach zone is established at each end of all noninstrument runways for noninstrument landings and takeoffs. The noninstrument approach zone shall have a width of five hundred (500) feet at a distance of two hundred (200) feet beyond each end of the runway, widening thereafter uniformly to a width of two thousand five hundred (2,500) feet at a distance of ten thousand two hundred (10,200) feet beyond each end of the runway, its centerline being the continuation of the centerline of the runway.

C. VFR Approach Zone. A visual flight rules approach zone shall have a width of two hundred (200) feet at a distance of one hundred (100) feet beyond each end of the runway widening thereafter uniformly to a width of five hundred (500) feet at a distance of three thousand one hundred (3,100) feet beyond each end of the runway.

D. Transition Zones (Not Applicable to VFR Airports). Transition zones are established adjacent to each instrument and noninstrument runway and approach zone as indicated on the zoning map. Transition zones symmetrically located on either side of runways have variable widths as shown on the zoning map. Transition zones extend outward from a line two hundred (200)

feet on either side of the centerline of the noninstrument runway, for the length of such runway plus two hundred (200) feet on each end; and five hundred (500) feet on either side of the centerline of the instrument runway, for the length of such runway plus two hundred (200) feet on each end; and are parallel and level with such runway centerlines. The transition zones along such runways slope upward and outward one (1) foot vertically for each seven (7) feet horizontally to the point where they intersect the surface of the horizontal zone. Further, transition zones are established adjacent to both instrument and noninstrument approach zones for the entire length of the approach zones. These transition zones have variable widths, as shown on the zoning map. Such transition zones flare symmetrically with either side of the runway approach zones from the base of such zones and slope upward and outward at the rate of one (1) foot vertically for each seven feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones. Additionally, transition zones are established adjacent to the instrument approach zone where it projects through and beyond the limits of the conical zone, extending a distance of five thousand (5,000) feet, measured horizontally, from the edge of the instrument approach zones at right angles to the continuation of the centerline of the runway.

E. Horizontal Zone. A horizontal zone is established as the area within a circle with its center at the airport reference point and having a radius of thirteen thousand (13,000) feet. The horizontal zone does not include the instrument and noninstrument approach zones and the transition zones.

F. Conical Zone. A conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a distance of seven thousand (7,000) feet. The conical zone does not include the instrument approach zones and transition zones. (Prior code § 3-2)

12.36.030 Height limitations.

Except as otherwise provided in this chapter, no structure or tree shall be erected, altered, allowed to grow or maintained in any zone created by this chapter, to a height in excess of the height limit established in this section for such zone. Such height limitations are hereby established for each of the zones in question as follows:

A. Instrument approach zone: one (1) foot in height for each fifty (50) feet in horizontal distance, beginning at a point two hundred (200) feet from and at

the centerline elevation of the end of the instrument runway and extending to a distance of ten thousand two hundred (10,200) feet from the end of the runway; thence, one (1) foot in height for each forty (40) feet in horizontal distance to a point fifty thousand two hundred (50,200) feet from the end of the runway.

B. Noninstrument approach zone: one (1) foot in height for each forty (40) or twenty feet in horizontal distance, beginning at a point two hundred (200) feet from and at the centerline elevation of the end of the noninstrument runway and extending to a point ten thousand two hundred (10,200) feet from the end of the runway.

C. VFR airport approach zone: one (1) foot in height for each twenty (20) feet in horizontal distance, beginning at a point one hundred (100) feet from and at the centerline elevation of the end of the runway.

D. Transition zone: one (1) foot in height for each seven feet in horizontal distance, beginning at any point four hundred (400) feet normal to and at the elevation of the centerline of noninstrument runways, extending two hundred (200) feet beyond each end thereof, and five hundred (500) feet normal to and at the elevation of the centerline of the instrument runway, extending two hundred (200) feet beyond each end thereof, extending to a height of one hundred fifty (150) feet above the airport elevation, which is three thousand six hundred ninety-five (3,695) feet above mean sea level. In addition to the foregoing, there are established height limits of one (1) foot vertical height for each seven (7) feet horizontal distance, measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Further, where the instrument approach zone projects through and beyond the conical zone, a height limit of one (1) foot for each seven (7) feet of horizontal distance shall be maintained, beginning at the edge of the instrument approach zone and extending a distance of five thousand (5,000) feet from the edge of the instrument approach zone, measured normal to the centerline of the runway extended.

E. Horizontal zone: one hundred fifty (150) feet above the airport elevation height of three thousand seven hundred forty-five (3,745) feet above mean sea level.

F. Conical zone: One (1) foot in height for each twenty (20) feet of horizontal distance, beginning at the periphery for the horizontal zone, extending to a height of five thousand one hundred ninety-five (5,195) feet above the airport elevation.

Nothing in this chapter shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height up to sixty (60) feet above the surface of the land.

Where an area is covered by more than one (1) height limitation, the more restrictive limitations shall prevail. (Prior code § 3-3)

12.36.040 Use restrictions.

Notwithstanding any other provisions of this chapter, no use may be made of land within any zone established by this chapter in such a manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport or otherwise endanger the landing, taking off or maneuvering of aircraft. (Prior code § 3-4)

12.36.050 Nonconforming uses.

A. Regulations Not Retroactive. The regulations prescribed by this chapter shall not be construed to require the removal, lowering or other changes or alteration of any structure or tree not conforming to the regulations as of October 23, 1970, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to October 23, 1970, and which is diligently prosecuted.

B. Marking and Lighting. Notwithstanding subsection A of this section, the owner of any nonconforming structure or tree is required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the City Manager to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated and maintained at the expense of the City. (Prior code § 3-5)

12.36.060 Permits and variances.

A. Future Uses. Except as specifically provided in paragraphs (1), (2) and (3) of this subsection, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted or otherwise established in any zone hereby created, unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the

permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

1. In the area lying within the limits of the horizontal zone and the conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zone.

2. In the areas lying within the limits of the instrument and noninstrument approach zones, but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runways, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such instrument or noninstrument approach zone.

3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of any of the height limits established by this chapter, except as set forth in Section 12.36.030.

B. Existing Uses. No permit for an existing use shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or to become higher, or to become a greater hazard to air navigation than it was on October 23, 1970, or on the effective date of any applicable amendment to this chapter, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

C. Nonconforming Uses Abandoned or Destroyed. Whenever the building inspector determines that a non conforming structure or tree has been abandoned or more than eighty (80) percent torn down, or that such structure or tree is physically

deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from this chapter.

D. Variances. Any person desiring to erect or increase the height of any structure, permit the growth of any tree or use his or her property, not in accordance with the regulations prescribed in this chapter, may apply to the Board of Appeals for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations contained in this chapter would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of this chapter.

E. Hazard Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purposes of this chapter and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the City, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

As to Hobbs Industrial Air Park Board generally, see Chapter 2.44 of this code. (Prior code § 3-6)

12.36.070 Hobbs Industrial Air Park Board to administer and enforce chapter.

It shall be the duty of the Hobbs Industrial Air Park Board to administer and enforce the regulations prescribed in this chapter. Applications for permits and variances shall be made to the Hobbs Industrial Air Park Board upon a form furnished by the City. Applications required by this chapter to be submitted to the Hobbs Industrial Air Park Board shall be promptly considered and granted or denied by such Board. Applications for action by the Board of Appeals shall be forthwith transmitted by the Hobbs Industrial Air Park Board. (Prior code § 3-7)

12.36.080 Board of appeals—Generally.

A. Created—Powers Generally. There is created a Board of Appeals, to have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision or determination made by the Hobbs Industrial Air Park Board in the enforcement of this chapter.

2. To hear and decide special exceptions to the terms of this chapter, upon which such Board of Appeals under such regulations may be required to pass.

3. To hear and decide specific variances.

B. Composition—Appointment and Removal of Members—Terms. The Board of Appeals shall consist of five (5) members, appointed by the Mayor with the consent of the City Commission, and each shall serve for a term of three (3) years and until his or her successor is duly appointed and qualified. Of the members first appointed, one (1) shall be appointed for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years, and thereafter the members shall serve for three (3) years. Members shall be removable by the Appointing Authority for cause, upon written charges, after a public hearing.

C. Rules—Meetings—Minutes and Records. The Board of Appeals shall adopt rules for its governance and procedure in harmony with the provisions of this chapter. Meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board of Appeals may determine. The Chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All hearings of the Board of Appeals shall be public. The Board of Appeals shall keep 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 immediately be filed in the office of the City Clerk and shall be a public record.

D. Written Findings of Fact. The Board of Appeals shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this chapter.

E. Majority Vote Required for Action. The concurring vote of a majority of the members of the Board of Appeals shall be sufficient to reverse any order, requirement, decision or determination of the Hobbs Industrial Air Park Board, or to decide in favor of the applicant on any matter upon which such Board of Appeals is required to pass under this chapter, or to effect any variation in this chapter. (Prior code § 3-8)

12.36.090 Board of appeals—Appeals.

A. Any person aggrieved, or any taxpayer affected, by any decision of the Hobbs Industrial Air Park Board made in their administration of this chapter may appeal to the Board of Appeals.

B. All appeals hereunder must be taken within a reasonable time as provided by the rules of the Board of Appeals, by filing with the Hobbs Industrial Air Park Board a notice of appeal, specifying the grounds thereof. The Hobbs Industrial Air Park Board shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

C. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Hobbs Industrial Air Park Board certifies to the Board of Appeals, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by order of the Board of Appeals on notice to the Hobbs Industrial Air Park Board and on due cause shown.

D. The Board of Appeals shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear, in person, by agent or by attorney.

E. The Board of Appeals may, in conformity with the provisions of this chapter, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances. (Prior code § 3-9)

12.36.100 Board of appeals—Judicial review of decisions.

Any person aggrieved, or any taxpayer affected, by any decision of the Board of Appeals may appeal to the district court of the county as provided in Section 3-39-23 of the New Mexico Statutes Annotated, 1978 Compilation. (Prior code § 3-10)

12.36.110 Violations—Penalties.

Each violation of this chapter or of any regulation, order or ruling promulgated hereunder shall constitute a misdemeanor and be punishable by a fine of not more than five hundred dollars ($500.00), or imprisonment for not more than ninety (90) days, or both such fine and imprisonment, and each day a violation continues to

exist shall constitute a separate offense. (Prior code § 3-11)

12.36.120 Conflicting provisions.

Where there exists a conflict between any of the regulations or limitations prescribed in this chapter and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, the use of land or any other matter, the more stringent limitation or requirement shall govern and prevail. (Prior code § 3-12)

Title 13

PUBLIC SERVICES*

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Chapter 13.08 Sewer Service

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Article 2. Sewer Connections

13.08.020 Reserved.

***Editor's note—**Ord. No. 1079, adopted Nov. 3, 2014, and effective Dec. 1, 2014, repealed the former Title 13, §§ 13.04.010—13.04.140, 13.08.005—13.08.120, 13.12.010—13.12.250, 13.20.010—13.20.030, 13.24.010—13.24.030, 13.28.010, and enacted a new Title 13 as set out herein. The former Title 13 pertained to similar subject matter and derived from Ord. No. 990, adopted June 18, 2008. For a complete derivation, see the Ordinance Disposition List and the Code Comparative Table at the end of this volume.

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13.08.030 Reserved.
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13.08.050 Septic tanks not in use.
13.08.060 Use of buildings not connected with sewers or septic tanks.
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Article 3. Sewer Rates and Charges

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Chapter 13.20 Regulations For Water Conservation, Water Restrictions And Water Waste

13.20.010 Water conservation and water restrictions
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13.24.010 Conditions for discharge.
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Chapter 13.28 Water Wells

13.28.010 Restrictions upon drilling of water wells within the City limits.

Chapter 13.04 WATER SERVICE

13.04.010 Applicability of article to consumers inside and outside City limits.

The provisions of this chapter shall apply to City water service consumers located both inside and outside the City limits. The City Commission may from time to time adopt and revise policies with regard to water service in addition to the regulations set forth in this chapter and other City ordinances. Copies of such policies may be found on file in the office of the City Clerk.
(Ord. No. 1079, 11-3-2014)

13.04.013 Reserved.

13.04.015 Reserved.

13.04.017 Water wells.

All water wells located on premises or property connected to the City's water distribution system shall be properly plugged and abandoned per NMED rules and regulations. It is unlawful for the owner of any premises, whether or not such premises are connected to the City's water distribution system, to allow any abandoned or inoperable water well to remain improperly plugged and abandoned.
(Ord. No. 1079, 11-3-2014)

13.04.020 Water service—Definitions.

For the purposes of Section 13.04.030, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Bulk water consumer" means any user or consumer that uses, loads, and/or transports potable water from a City or privately owned and operated bulk water station or other delivery apparatus, or method for personal, commercial, industrial, construction, or re-sale usage.

"Commercial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade, or pursuit for the purpose of profit or nonprofit, and who are required to obtain a State taxpayer identification number, including any two (2) or more dwellings/living units connected to one (1) meter, and whose property is situated within the corporate boundaries of the City of Hobbs.

"Consumer" means any person, property owner, property, entity, customer, resident, citizen, tenant, lessee, renter, corporation, or company that is connected to, uses, or is required to use or connect to the City of Hobbs water distribution system.

"Domestic consumer" means a single-family residence user or consumer whose property is situated within the corporate boundaries of the City of Hobbs.

"Industrial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade or pursuit and whose property is situated within the corporate limits of the City of Hobbs and discharges or has the potential to discharge waste from any industrial, manufacturing, food processing or any other type of activity or processing operation into the sanitary sewer system.

"Irrigation consumer" means any user or consumer of water whose property is situated within the corporate boundaries of the City of Hobbs for the sole purpose of watering landscaping, lawns or turfs. An irrigation consumer shall have a separate water meter and tap for the sole purpose of watering landscaping, lawns or turfs and shall not discharge any of such water to the wastewater collection system (sanitary sewer).

"Municipal consumer" means any user or consumer that is a division or part of the municipal government.

"Outside-City bulk water consumer" means any user or consumer that uses, loads, and/or transports potable water from a City or privately owned and operated bulk water station or other delivery apparatus, or method for personal, commercial, industrial, construction, or re-sale usage.

"Outside-City commercial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the purpose of profit or nonprofit, and who are required to obtain a State taxpayer identification number, including any two (2) or more dwellings/living units connected to one (1) meter, and whose property is situated outside the corporate boundaries of the City of Hobbs.

"Outside-City domestic consumer" means a single-family residence user or consumer whose property is situated outside the corporate boundaries of the City of Hobbs.

"Outside-City industrial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade or pursuit and whose property is situated outside the corporate limits of the City of Hobbs and discharges or has the potential to discharge waste from any industrial, manufacturing, food processing or any other type of activity or processing operation into the sanitary sewer system.

"Outside-City irrigation consumer" means any user or consumer of water whose property is situated outside the corporate boundaries of the City of Hobbs for the sole purpose of watering landscaping, lawns or turfs. An irrigation consumer shall have a separate water meter and tap for the sole purpose of watering landscaping, lawns or turfs and shall not discharge any of the water to the wastewater collection system (sanitary sewer).
(Ord. No. 1079, 11-3-2014)

13.04.030 Water service—Rate schedule.

The rates charged to consumers for the use of City water shall be as follows:

A. Rates—Domestic, Commercial, Municipal, Industrial, and Irrigation Accounts.

1. Minimum Monthly Rates:

Meter Size	Minimum Monthly Charge	
<1 inch meter	First 2,000 gallons or less	$6.50
1 inch meter	First 2,000 gallons or less	$9.10
2 inch meter	First 2,000 gallons or less	$18.85
3 inch meter	First 2,000 gallons or less	$71.50
4 inch meter	First 2,000 gallons or less	$91.00
6 inch meter	First 2,000 gallons or less	$136.50
8 inch meter	First 2,000 gallons or less	$188.50
10 inch meter	First 2,000 gallons or less	$282.75

2. Additional Charge for Each One Thousand (1,000) gallons of Usage Above the Minimum:

a. Domestic Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.18	$1.26	$1.35	$1.44	$1.54	$1.65	$1.76	$1.87
10,001—25,000	$1.34	$1.45	$1.55	$1.66	$1.77	$1.90	$2.03	$2.17
25,001—50,000	$1.46	$1.57	$1.70	$1.84	$1.98	$2.14	$2.31	$2.50
50,001—100,000	$1.86	$2.04	$2.22	$2.40	$2.59	$2.67	$2.75	$2.83
Above 100,000	$2.13	$2.34	$2.55	$2.76	$2.97	$3.06	$3.15	$3.25

b. Commercial Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.18	$1.26	$1.35	$1.44	$1.54	$1.65	$1.76	$1.87
10,001—25,000	$1.34	$1.45	$1.55	$1.66	$1.77	$1.90	$2.03	$2.17
25,001—50,000	$1.46	$1.57	$1.70	$1.84	$1.98	$2.14	$2.31	$2.50
50,001—100,000	$1.86	$2.04	$2.22	$2.40	$2.59	$2.67	$2.75	$2.83

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
Above 100,000	$2.13	$2.34	$2.55	$2.76	$2.97	$3.06	$3.15	$3.25

c. Municipal Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.18	$1.26	$1.35	$1.44	$1.54	$1.65	$1.76	$1.87
10,001—25,000	$1.34	$1.45	$1.55	$1.66	$1.77	$1.90	$2.03	$2.17
25,001—50,000	$1.46	$1.57	$1.70	$1.84	$1.98	$2.14	$2.31	$2.50
50,001—100,000	$1.86	$2.04	$2.22	$2.40	$2.59	$2.67	$2.75	$2.83
Above 100,000	$2.13	$2.34	$2.55	$2.76	$2.97	$3.06	$3.15	$3.25

d. Industrial Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.18	$1.26	$1.35	$1.44	$1.54	$1.65	$1.76	$1.87

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
10,001—25,000	$1.34	$1.45	$1.55	$1.66	$1.77	$1.90	$2.03	$2.17
25,001—50,000	$1.46	$1.57	$1.70	$1.84	$1.98	$2.14	$2.31	$2.50
50,001—100,000	$1.86	$2.04	$2.22	$2.40	$2.59	$2.67	$2.75	$2.83
Above 100,000	$2.13	$2.34	$2.55	$2.76	$2.97	$3.06	$3.15	$3.25

e. Irrigation Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.46	$1.61	$1.75	$1.90	$2.04	$2.10	$2.16	$2.23
10,001—25,000	$1.68	$1.85	$2.01	$2.18	$2.35	$2.42	$2.49	$2.57
25,001—50,000	$1.94	$2.13	$2.32	$2.51	$2.70	$2.78	$2.86	$2.95
50,001—100,000	$2.23	$2.45	$2.66	$2.88	$3.10	$3.19	$3.29	$3.39
Above 100,000	$2.56	$2.81	$3.06	$3.32	$3.57	$3.68	$3.79	$3.90

B. Rates—Outside City—Domestic, Commercial, Industrial, and Irrigation Accounts.

1. Minimum Monthly Rates—Outside City:

Meter Size	Minimum Monthly Charge	
<1 inch meter	First 2,000 gallons or less	$9.75
1 inch meter	First 2,000 gallons or less	$13.65
2 inch meter	First 2,000 gallons or less	$28.28
3 inch meter	First 2,000 gallons or less	$107.25
4 inch meter	First 2,000 gallons or less	$136.50
6 inch meter	First 2,000 gallons or less	$204.75
8 inch meter	First 2,000 gallons or less	$282.75
10 inch meter	First 2,000 gallons or less	$424.13

2. Additional Charge for Each One Thousand (1,000) gallons of Usage Above the Minimum:

a. Outside-City Domestic Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	12/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021
2,001—10,000	$1.77	$1.89	$2.03	$2.16	$2.31	$2.48	$2.64	$2.81
10,001—25,000	$2.01	$2.18	$2.33	$2.49	$2.66	$2.85	$3.05	$3.26
25,001—50,000	$2.19	$2.36	$2.55	$2.76	$2.97	$3.21	$3.47	$3.75
50,001—100,000	$2.79	$3.06	$3.33	$3.60	$3.89	$4.01	$4.13	$4.25
Above 100,000	$3.20	$3.51	$3.83	$4.14	$4.46	$4.59	$4.73	$4.88

b. Outside-City Commercial Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.77	$1.89	$2.03	$2.16	$2.31	$2.48	$2.64	$2.81
10,001—25,000	$2.01	$2.18	$2.33	$2.49	$2.66	$2.85	$3.05	$3.26
25,001—50,000	$2.19	$2.36	$2.55	$2.76	$2.97	$3.21	$3.47	$3.75
50,001—100,000	$2.79	$3.06	$3.33	$3.60	$3.89	$4.01	$4.13	$4.25
Above 100,000	$3.20	$3.51	$3.83	$4.14	$4.46	$4.59	$4.73	$4.88

c. Outside-City Industrial Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$1.77	$1.89	$2.03	$2.16	$2.31	$2.48	$2.64	$2.81
10,001—25,000	$2.01	$2.18	$2.33	$2.49	$2.66	$2.85	$3.05	$3.26
25,001—50,000	$2.19	$2.36	$2.55	$2.76	$2.97	$3.21	$3.47	$3.75
50,001—100,000	$2.79	$3.06	$3.33	$3.60	$3.89	$4.01	$4.13	$4.25

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
Above 100,000	$3.20	$3.51	$3.83	$4.14	$4.46	$4.59	$4.73	$4.88

d. Outside-City Irrigation Accounts:

Water Charge per 1,000 gallons and the Effective Date								
Usage Range	**12/1/2014**	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
2,001—10,000	$2.19	$2.42	$2.63	$2.85	$3.06	$3.15	$3.24	$3.35
10,001—25,000	$2.52	$2.78	$3.02	$3.27	$3.53	$3.63	$3.74	$3.86
25,001—50,000	$2.91	$3.20	$3.48	$3.77	$4.05	$4.17	$4.29	$4.43
50,001—100,000	$3.35	$3.68	$3.99	$4.32	$4.65	$4.79	$4.94	$5.09
Above 100,000	$3.84	$4.22	$4.59	$4.98	$5.36	$5.52	$5.69	$5.85

C. Rates—Bulk Water Accounts and Outside City Bulk Water Accounts.

Bulk Water Accounts: All bulk water usage shall be billed at the bulk water rate of eight dollars and fifty cents ($8.50) for each one hundred (100) gallons used.

Outside City Bulk Water Accounts: All outside City bulk water usage shall be billed at the outside City bulk water rate of thirteen dollars ($13.00) for each one hundred (100) gallons used.

For billing purposes, the water usage volume shall be based upon the maximum carrying capacity of the respective tanker or container, unless a City furnished meter is provided.

All bulk water consumers and outside City bulk water consumers and users shall ensure that all trucks, tanks, containers, and/or other means of loading, conveying, and transporting potable water are properly fitted with effective backflow prevention devices as approved by the Utilities Director. All hoses, piping, and other devices used on the outlet side of the meter must be in good working order to prevent leakage and water waste. Failure to comply will result in the meter being removed from service.

D. Annual Cost of Service Increase. All service and usage charges detailed in this section shall be subject to a cost of service increase equal to the annual percentage increase of the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent December to December period. The cost of service increase shall be effective each July 1st unless rescinded by the Hobbs City Commission sixty (60) calendar days prior.

(Ord. No. 1079, 11-3-2014)

13.04.040 Charges for delinquent accounts.

The following charges shall be applied to consumers delinquent in their accounts:

A. Late payment fee for non-payment $50.00

A delinquent account charge or late payment fee is applied at the time an account becomes subject to disconnection for non-payment. All charges assessed to any property, regardless of who is responsible for the charges, must be paid in full prior to reinstatement of any utilities services to a delinquent property.

B. Charge for tampering with utilities services $75.00

In addition to a potential criminal charge for tampering with utilities services (Section 6.16.160 of the Hobbs Municipal Code), consumers and/or property owners shall be billed the actual cost of any repairs and/or replacement of damaged equipment and/or appurtenances and the costs thereof and all other charges, fees, penalties, interest, etc., owed on the account must be paid, in full, prior to any utilities services being restored to any property. All delinquent charges assessed to a property must be paid in full prior to reinstatement of any utilities services to a delinquent property.

Charge for additional tampering with utilities services, water meters, City padlocks and/or appurtenances. If the water meter has been removed due to tampering with utilities services and non-payment, and evidence of further tampering with the utility service is discovered, an additional tampering charge will be added to the delinquent account $200.00

C. Consumers shall be billed the actual cost of any repairs and/or replacement of damaged equipment and/or appurtenances and the costs thereof and all other charges, fees, penalties, interest, etc., owed on the account must be paid, in full, prior to any utilities services being restored. All delinquent charges assessed to any property, regardless of who is responsible for the charges, must be paid in full prior to reinstatement of any utilities services to a delinquent property.

D. All charges under Section 13.04.040 shall attach to the property not withstanding who is responsible for such charges. The charges due and unpaid under this chapter shall be a debt due the City and payable by the consumer or the property owner, if a renter or tenant defaults, at the time the charge accrues and becomes due, which is at billing time. If any such charges remain unpaid, the property shall be subject to Section 13.04.120 of the Hobbs Municipal Code.

(Ord. No. 1079, 11-3-2014)

13.04.050 Charge for service calls beyond normal working hours, holidays or on weekends.

Except for repairs, there shall be a charge of fifty dollars ($50.00) for all service calls beyond normal working hours, on holidays, or on weekends. This fee shall be in addition to any and all other service charges incurred, i.e., disconnect, reconnect, installations, etc.
(Ord. No. 1079, 11-3-2014)

13.04.060 Discontinuance, establishment, and reinstatement of service generally.

A. Water and sewer service, and all other services, may be discontinued when the charges therefor remain unpaid for thirty (30) days after the billing date or at the consumer's request.

B. Service may be discontinued and meters may be removed from the service location for the following reasons:

1. Nonpayment of account;
2. Meters or service found to be tampered with, abused, or misused;
3. Any service found to be improperly or illegally connected to the system or discharging onto public or private property creating a public health hazard or nuisance;
4. Service has been discontinued (not in use) for a period of three (3) consecutive months; or
5. Through the written direction and order of the City Manager or his/her designee.

C. For establishing or reinstating service. A charge of twenty dollars ($20.00) shall be required.

D. For establishing or reinstating service. If the service lateral is unusable, the consumer must pay for the new water meter, if required, and the installation of a new tap and lateral. A charge of twenty dollars ($20.00) shall be required for establishing or reinstating the service.

E. For establishing or reinstating service. If the service lateral cannot be located or if the lateral has been abandoned by the City or is in an unusable location, the consumer must pay for a new water meter, if required, and a new tap and lateral installation, plus twenty dollars ($20.00) for establishing or reinstating the service.

F. When property fronts on a service main subject to frontage line charges, the consumer must pay a twenty dollar ($20.00) service establishment or reinstatement charge, plus:

1. The frontage line charges;

2. The cost of installing the meter(s), tap(s), and lateral(s) if required.

G. The City reserves the right to change the size and location of meters to conform to the rates, regulations, and policies.
(Ord. No. 1079, 11-3-2014)

13.04.070 Deposits for establishing, opening, transferring or reinstating water accounts.

Consumers wishing to establish, open, or to reinstate water service accounts shall make the following deposits:

A. Domestic Consumer:

Meter Size	Deposit
<1 inch meter	$40.00
1 inch meter	$40.00
2 inch meter	$100.00
3 inch meter	$150.00
4 inch meter	$200.00
6 inch meter or larger; the actual meter cost plus the deposit	$300.00

B. Domestic Consumer Renting or Leasing Property:

Meter Size	Deposit
<1 inch meter	$80.00
1 inch meter	$80.00
2 inch meter	$200.00
3 inch meter	$300.00
4 inch meter	$400.00
6 inch meter or larger; the actual meter cost plus the deposit	$500.00

C. Commercial and Industrial Consumer:

Meter Size	Deposit
<1 inch meter	$40.00

Meter Size	Deposit
1 inch meter	$40.00
2 inch meter	$100.00
3 inch meter	$150.00
4 inch meter	$200.00
6 inch meter or larger; the actual meter cost plus the deposit	$300.00

D. The City reserves the right to increase or decrease a consumer's deposit when a transfer request has been made by the consumer or at the direction of the Utilities Director or his or her designee based upon the consumer's payment and service history.

E. Such deposits shall be in addition to the service establishment or reinstatement charge provided for in Section 13.04.060.

(Ord. No. 1079, 11-3-2014)

13.04.080 Water meter installation.

A. The charges for the installation of water meters shall be as follows:

1. An advance line and tap deposit of five hundred dollars ($500.00) is required. No line and tap deposit is required if the service address has been pre-tapped and the pre-tap is useable;

2. The actual cost of the materials, appurtenances, labor and equipment required to complete the installation work;

3. The actual cost of any street cut. This includes flowable concrete backfill, pavement and/or concrete removal and repair as required by the City of Hobbs's specifications and standards. If a street cut is required, an advance street cut deposit of five hundred dollars ($500.00) shall be deposited with the City of Hobbs;

4. All deposits shall be applied to the actual cost to complete the water service installation. After all installation costs have been accounted for, the consumer shall be credited the deposit amount(s) to their utility service account and the balance will be applied to their account.

B. Bypass water meter installation on fire protection laterals is prohibited.

C. Increase in Water Meter Size. Fifty dollars ($50.00), plus the actual cost of installing a new tap and lateral if required, plus the cost of the proposed meter.

D. Reduction in Water Meter Size. Fifty dollars ($50.00), plus the actual cost of installing the new tap and lateral if required, plus the cost of the proposed meter.

E. Relocation of a Water Meter. Fifty dollars ($50.00), plus the cost of the new water tap and lateral if required, and the actual cost of the materials, appurtenances, labor and equipment required to complete the installation work.
(Ord. No. 1079, 11-3-2014)

13.04.090 Water meters, temporary water meters, construction meters, fire hydrant meters and special meter deposits—Additional charges.

A. Water meters, temporary water meters, construction meters, and fire hydrant meters are the property of the City of Hobbs and cannot be subleased, moved, altered or modified by the consumer under any circumstances. The meter deposit for temporary water meters, construction meters, and fire hydrant meters shall be the actual cost of the meter, plus five hundred dollars ($500.00).

B. The Utilities Director, or his or her designee, may issue a ninety-day temporary meter, construction meter, or fire hydrant meter use permit. These meters are to be used strictly for temporary construction related purposes. The re-sale of water from a temporary meter, construction meter, or fire hydrant meter is prohibited. Water used from temporary meters, construction meters, or fire hydrant meters may only be used on the property, or properties, recorded on the temporary use permit and only for the specific purpose, or purposes, as stated in the permit. Permits may not be assigned, sold, or used by any other party, person, or entity.

C. The meter charge for temporary water meters, construction meters, and fire hydrant meters shall include a fifty dollar ($50.00) permitting, installation and removal charge, plus a twenty-five dollar ($25.00) monthly service charge in addition to the actual water usage charge. A fifty dollar ($50.00) service charge shall be applied for each meter relocation request. Only authorized City of Hobbs Utilities Department personnel may remove, service, or relocate any water meter, temporary water meter, construction meter, or fire hydrant meter. Tampering with or removing or moving of any water meter, temporary water meter, construction meter or fire hydrant meter by unauthorized persons shall result in the discontinuance of service and additional charges and penalties in accordance with the provisions set forth in the City of Hobbs Municipal Code. All users of temporary water meters, construction meters, and fire hydrant meters shall ensure that all trucks, tanks, containers, and or other means of loading, conveying, and transporting potable water are water tight and properly fitted with effective backflow prevention devices

as approved by the Utilities Director or his/her designee. All hoses, piping, and other devices used on the outlet side of the meter must be properly fitted and in good working order to prevent leakage and water waste. Failure to comply will result in the revocation of the temporary use permit and the meter being removed from service.

D. Water usage rates for temporary water meters, construction meters and fire hydrant meters:

1. The water usage rates for temporary water meters and construction meters shall be based on the rates established for commercial accounts or outside-City commercial accounts, dependent upon the meter size and location, pursuant to Section 13.04.030 of the Hobbs Municipal Code. The water usage rates for fire hydrant meters shall be based on the rates established for six-inch meters and at the usage rates established for commercial accounts or outside-City commercial accounts, dependent upon the fire hydrant location, pursuant to Section 13.04.030 of the Hobbs Municipal Code.

E. Special meter deposits:

1. Real Estate Meters. A New Mexico licensed real estate firm doing business in the City may make a one-time two hundred dollar ($200.00) deposit to cover all listings, present or future, and upon the firm's request for transfer, the City will not shut off or remove the meter at the service location after account closing. Charges for water consumed at each listing location will be based upon the standard commercial rates. Charges described in Section 13.04.060, discontinuance and reinstatement of service shall apply.

(Ord. No. 1079, 11-3-2014)

13.04.100 Fire hydrant installation charges.

The following charges shall be made for the installation of fire hydrants:

A. Actual cost of the fire hydrant, materials, parts and all required appurtenances.

B. Actual cost of the labor and equipment to complete the installation.

C. The actual cost of any pavement or concrete removal and repair or replacement as required.

(Ord. No. 1079, 11-3-2014)

13.04.110 Additional charges for testing meters, when found in proper condition.

Any customer who believes that their water meter is not registering accurately may apply to have the water meter tested by an independent testing facility. A written meter testing request must be submitted to the Utility Billing Office. If the meter registers more than five (5) percent high, the City will adjust the associated monthly water bill. If the meter is found to be accurate within five (5) percent, or if the meter is reading low, the following charges shall be added to such customer's subsequent utility bill:

A. A fifty dollar ($50.00) meter testing service charge.

B. Plus, the actual cost to perform meter testing.

(Ord. No. 1079, 11-3-2014)

13.04.120 Certain charges designated lien on property—Enforcement of lien generally.

Any charge imposed for water or other services, frontage line charges, or installation of facilities and not paid for by the consumer, customer, and/or property owner shall be a lien upon the tract or parcel of land being serviced from such time as charges remain unpaid and are deemed delinquent.

In accordance with State law, the City Clerk shall file in the office of the County Clerk a notice of lien created by this chapter, and the same shall be enforced as provided by the appropriate statutes. The charges imposed by this chapter for services rendered by the City shall be a lien upon the tract or parcel of land being serviced from such time as charges remain unpaid and are deemed delinquent.

If such amount due, with interest, is not paid, the City may, at its option, foreclose its lien against the owner and the property as named in the lien, as provided by law for the foreclosure of municipal liens, for the unpaid amount, interest, and attorney's fees.

(Ord. No. 1079, 11-3-2014)

13.04.130 Additional regulations not contained in chapter.

All regulations not contained in this chapter regarding the use of and policies of the City concerning water shall be established by municipal resolutions.

(Ord. No. 1079, 11-3-2014)

13.04.140 Appropriation of funds.

The governing body is authorized, by municipal resolution, from time to time to direct that portions of the revenues received under this chapter be used for specific purposes for prescribed periods of time.
(Ord. No. 1079, 11-3-2014)

Chapter 13.08 SEWER SERVICE

Article 1. General Provisions

13.08.010 Additional sewer service policies not included in chapter.

The City Commission may from time to time adopt and revise policies with regard to sewer service in addition to the regulations set forth in this chapter and other City ordinances. Copies of such policies may be found on file in the office of the City Clerk.
(Ord. No. 1079, 11-3-2014)

Article 2. Sewer Connections

13.08.020 Reserved.

13.08.021 Installation of sanitary sewer laterals.

A. A New Mexico licensed plumber or a New Mexico licensed utility contractor, authorized by the City of Hobbs's Utilities Department, shall make all connections to the City of Hobbs's sanitary sewer collection system. However, if the Utilities Director deems it to be in the best interest of the City of Hobbs, authorized Utilities Department personnel may make connections to the City's sanitary sewer collection system. All connections to the City of Hobbs's sanitary sewer collection system require a sewer tap permit issued by the City of Hobbs and shall meet all of the City of Hobbs's installation specifications and standards and the provisions set forth in the City of Hobbs Utility Service Policy.

B. An advance sewer tap deposit of two hundred fifty dollars ($250.00) shall be deposited with the City of Hobbs. The advance sewer tap deposit of two hundred fifty dollars ($250.00) is fully refundable following final inspection of the sewer tap and connection and the issuance of a sewer tap completion and approval receipt by

an authorized City of Hobbs employee. All sanitary sewer installations and street cuts must be completed in accordance with the City of Hobbs's specifications and standards and the provisions set forth in the City of Hobbs Utility Service Policy.

C. If a street cut is required, an advance street cut deposit of two hundred fifty dollars ($250.00) shall be deposited with the City of Hobbs. The advance street cut deposit of two hundred fifty dollars ($250.00) is fully refundable following the issuance of a sewer tap completion and approval receipt by an authorized City of Hobbs employee. All street cuts must be completed in accordance with the City of Hobbs's specifications and standards and the provisions set forth in the City of Hobbs Utility Service Policy.

D. If a sanitary sewer connection is to be made by authorized Utilities Department personnel, the following installation charges shall be paid by the consumer:

1. An advance line and tap deposit of five hundred dollars ($500.00) is required. No line and tap deposit is required if the service address has been pre-tapped and the pre-tap is useable;
2. The actual cost of the materials, appurtenances, labor and equipment required to complete the installation;
3. The actual cost of any street cut. This includes flowable concrete backfill, pavement and/or concrete removal and repair as required by the City of Hobbs's specifications and standards. If a street cut is required, an advance street cut deposit of five hundred dollars ($500.00) shall be deposited with the City of Hobbs;
4. All deposits shall be applied to the actual costs to complete the sewer tap installation. After all installation costs have been accounted for, the deposit amount(s) shall be credited to the consumer's utility service account and the balance will be applied to the consumer's next utility bill.

E. Before excavating within the City of Hobbs's rights-of-way (ROW) and before pavement, sidewalk or curb cuts are begun; a City of Hobbs excavation permit must be obtained from the City of Hobbs's Building Official.

F. Before any work is begun or any connections are made to the sanitary sewer collection system, a City of Hobbs sewer tap permit must be obtained from the City of Hobbs's Building Official.
(Ord. No. 1079, 11-3-2014)

13.08.030 Reserved.

13.08.040 Property not adjoining sewers to connect with septic tanks.

All places of human habitation within the City that are located on property not adjoining streets or alleys in which sanitary sewer lines are laid, shall be equipped with proper plumbing and connected with a septic tank. All septic tanks and systems shall be permitted and constructed in accordance with the regulations and specifications as established by, and with the approval of, the New Mexico Environment Department and the City of Hobbs.
(Ord. No. 1079, 11-3-2014)

13.08.050 Septic tanks not in use.

All septic tanks not in use shall be properly abandoned in accordance with New Mexico Environment Department rules and regulations. It is unlawful for the owner of any premises on which is located a septic tank not in use to allow the same to remain unfilled, uncovered, or improperly abandoned.
(Ord. No. 1079, 11-3-2014)

13.08.060 Use of buildings not connected with sewers or septic tanks.

It is unlawful for any person to use as a place of human habitation any building within the City not equipped with proper plumbing and having sanitary sewer or septic tank connections, as the case may be. It is unlawful for the owner of any building used as a place of human habitation and not having proper plumbing and sanitary sewer or septic tank connections, as the case may be, to allow the same to be used as living quarters or to rent the same for living quarters.
(Ord. No. 1079, 11-3-2014)

13.08.070 Unconnected places of human habitation and unfilled septic tanks not in use declared nuisances.

All places of human habitation within the City not equipped with proper plumbing and properly connected to sanitary sewer lines or a septic tank, as the case may be, and all unfilled or improperly abandoned septic tanks not in use are declared to be public nuisances, and equitable remedies for the abatement of such nuisances are preserved.
(Ord. No. 1079, 11-3-2014)

13.08.080 Open pit toilets and cesspools declared nuisances.

It is unlawful for any person to keep, maintain, use, or permit the use of an open pit toilet or cesspool within the corporate limits. The keeping, maintaining or use thereof is declared to be a public nuisance and a public health and safety hazard, and equitable remedies for the abatement of such nuisances are preserved.
(Ord. No. 1079, 11-3-2014)

Article 3. Sewer Rates and Charges

13.08.090 Sewer service—Definitions.

For the purposes of Section 13.08.100, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Consumer" means any person, property owner, property, entity, customer, resident, citizen, tenant, lessee, renter, corporation, or company that is connected to, uses, or is required to use or connect to the City of Hobbs sanitary sewer collection system.

"Commercial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the purpose of profit or nonprofit and who are required to obtain a State taxpayer identification number, including any two (2) or more dwellings/living units connected to one (1) meter, and whose property is situated within the corporate boundaries of the City of Hobbs.

"Domestic consumer" means a single-family residence user or consumer whose property is situated within the corporate boundaries of the City of Hobbs.

"Industrial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade or pursuit and whose property is situated within the corporate limits of the City of Hobbs and discharges or has the potential to discharge waste from any industrial, manufacturing, food processing or any other type of activity or processing operation into the sanitary sewer system.

"Municipal consumer" means any user or consumer that is a division or part of the municipal government.

"Outside-City commercial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the

purpose of profit or nonprofit and who are required to obtain a State taxpayer identification number, including any two (2) or more dwellings/living units connected to one (1) meter, and whose property is situated outside the corporate boundaries of the City of Hobbs.

"Outside-City domestic consumer" means a single-family residence user or consumer whose property is situated outside the corporate boundaries of the City of Hobbs.

"Outside-City industrial consumer" means any non-municipal user or consumer engaged in operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade or pursuit and whose property is situated outside the corporate limits of the City of Hobbs and discharges or has the potential to discharge waste from any industrial, manufacturing, food processing or any other type of activity or processing operation into the sanitary sewer system.

"Sewer-only consumer" means any user or consumer not connected to the City's water system whose property is situated inside or outside the corporate limits of the City of Hobbs and discharges waste into the City of Hobbs sanitary sewer system. (Ord. No. 1079, 11-3-2014)

13.08.100 Sewer service—Rate schedule.

A. Domestic Monthly Rates.

1. Service Charge. The domestic consumer's minimum monthly service charge for all meter sizes shall be applied according to the following rate schedule and includes an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

Minimum Monthly Sewer Service Charge—Includes 2,000 gallons Usage							
12/1/2014	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
$8.10	$8.50	$8.60	$8.60	$8.60	$8.60	$8.60	$8.60

2. Usage Charge. The domestic consumer's usage charge shall be based on the consumer's three-month winter average. The three-month winter average is calculated by averaging the water usage during the successive months of November, January, and February of each calendar period. For all water in excess of two thousand (2,000) gallons of the consumer's

calculated three-month winter average, there shall be a monthly usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule.

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
$3.38	$3.41	$3.58	$3.76	$3.95	$4.15	$4.36	$4.62

In no case shall the consumer's three-month winter average exceed the following usage caps:

- < One (1) inch meter consumers are capped at a maximum of twenty thousand (20,000) gallons of usage per month.
- One (1) inch meter consumers are capped at a maximum of thirty thousand (30,000) gallons of usage per month.
- Two (2) inch and larger meter consumers are capped at a maximum of seventy-five thousand (75,000) gallons of usage per month.

B. Commercial Monthly Rates.

1. Service Charge. The commercial consumer minimum monthly service charge for all meter sizes shall be nine dollars and sixty cents ($9.60) and includes an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. For all water metered in excess of two thousand (2,000) gallons per month, there shall be a usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
$3.38	$3.41	$3.58	$3.76	$3.95	$4.15	$4.36	$4.62

C. Industrial Monthly Rates.

1. Service Charge. The industrial consumer minimum monthly service charge for all meter sizes shall be nine dollars and sixty cents ($9.60) and include an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. For all water metered in excess of two thousand (2,000) gallons per month, there shall be a usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021
$3.38	$3.41	$3.58	$3.76	$3.95	$4.15	$4.36	$4.62

D. Municipal Monthly Rates.

1. Service Charge. The municipal consumer minimum monthly service charge for all meter sizes shall be nine dollars and sixty cents ($9.60) and include an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. For all water metered in excess of two thousand (2,000) gallons per month, there shall be a usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021
$3.38	$3.41	$3.58	$3.76	$3.95	$4.15	$4.36	$4.62

E. Outside-City Domestic Monthly Rates.

1. Service Charge. The outside City domestic consumer's minimum monthly service charge for all meter sizes shall be applied according to the following rate schedule and includes an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

Minimum Monthly Sewer Service Charge—Includes 2,000 gallons Usage							
12/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021
$12.15	$12.75	$12.90	$12.90	$12.90	$12.90	$12.90	$12.90

2. Usage Charge. The outside City domestic consumer's usage charge shall be based on the consumer's three-month winter average. The three-month winter average is calculated by averaging the water usage during the successive months of November, January, and February of each calendar period. For all water in excess of two thousand (2,000) gallons of the consumer's calculated three-month winter average, there shall be a monthly usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021
$5.07	$5.12	$5.37	$5.64	$5.93	$6.23	$6.54	$6.93

In no case shall the consumer's three-month winter average exceed the following usage caps:

- < One (1) inch meter consumers are capped at a maximum of twenty thousand (20,000) gallons of usage per month.
- One (1) inch meter consumers are capped at a maximum of thirty thousand (30,000) gallons of usage per month.
- Two (2) inch and larger meter consumers are capped at a maximum of seventy-five thousand (75,000) gallons of usage per month.

F. Outside-City Commercial Monthly Rates.

1. Service Charge. The outside City commercial consumer minimum monthly service charge for all meter sizes shall be fourteen dollars and forty cents ($14.40) and includes an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. For all water metered in excess of two thousand (2,000) gallons per month, there shall be a usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
$5.07	$5.12	$5.37	$5.64	$5.93	$6.23	$6.54	$6.93

G. Outside-City Industrial Consumer.

1. Service Charge. The outside City commercial consumer minimum monthly service charge for all meter sizes shall be fourteen dollars and forty cents ($14.40) and includes an allowance of two thousand (2,000) gallons of water usage. The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. For all water metered in excess of two thousand (2,000) gallons per month, there shall be a usage charge for each one thousand (1,000) gallons of water used according to the following rate schedule:

Sewer Charge per 1,000 gallons and the Effective Date							
12/1/2014	**7/1/2015**	**7/1/2016**	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**
$5.07	$5.12	$5.37	$5.64	$5.93	$6.23	$6.54	$6.93

H. Sewer-Only Consumer.

1. Service Charge. The minimum monthly service charge for sewer only consumers shall be ten dollars ($10.00). The minimum monthly service charge is imposed regardless of water consumption.

2. Usage Charge. There shall be a usage charge at a rate determined by a field investigation and a recommendation by the Utilities Director or his or her designee.

I. Annual Cost of Service Increase. All service and usage charges detailed in this section shall be subject to a cost of service increase equal to the annual percentage increase of the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent December to December period. The cost of service increase shall be effective each July 1st unless rescinded by the Hobbs City Commission sixty (60) calendar days prior.
(Ord. No. 1079, 11-3-2014)

13.08.110 When charges due and payable—Lien.

A. The charges due and unpaid under this chapter shall be a debt due the City and payable by the consumer or the property owner, if a renter or tenant defaults, at the time the charge accrues and becomes due, which is at billing time.

B. The charges imposed by this chapter for services rendered by the City shall be a lien upon the tract or parcel of land being serviced from such time as charges remain unpaid and are deemed delinquent. The City Clerk shall, in accordance with New Mexico State law, file in the office of the County Clerk a notice of lien created by this chapter, and the same shall be enforced as provided by the appropriate statutes.

C. If such amount due, with interest, is not paid, the City may, at its option, foreclose its lien against the owner and the property as named in the lien, as provided by New Mexico State law for the foreclosure of municipal liens, for the unpaid amount, interest and attorney's fee.

D. The lien shall be enforced in the manner as provided in Section 3-36-1 through Section 3-36-5 of the New Mexico Statutes, 1978 Compilation.
(Ord. No. 1079, 11-3-2014)

13.08.120 Deposits for establishing, opening, transferring or reinstating sewer accounts.

Consumers wishing to establish, open, or to reinstate sewer service accounts shall make the following deposits:

A. Domestic Consumer:

Water Meter Size	Deposit Amount
<1" meter	$40.00
1" meter	$40.00
2" meter	$100.00
3" meter	$150.00
4" meter	$200.00
6" meter or larger; the actual meter cost plus the deposit	$300.00
Sewer only account	$300.00

B. Domestic Consumer Renting or Leasing Property:

Water Meter Size	Deposit Amount
<1" meter	$80.00
1" meter	$80.00
2" meter	$200.00
3" meter	$300.00
4" meter	$400.00
6" meter or larger; the actual meter cost plus the deposit	$500.00
Sewer only account	$500.00

C. Commercial and Industrial Consumer:

Water Meter Size	Deposit Amount
<1" meter	$40.00
1" meter	$40.00
2" meter	$100.00
3" meter	$150.00
4" meter	$200.00
6" meter or larger; the actual meter cost plus the deposit	$300.00
Sewer only account	$300.00

D. The City reserves the right to increase or decrease a consumer's deposit when a transfer request has been made by the consumer or at the direction of the Utilities Director or his or her designee based upon the consumer's payment and service history.

E. Such deposits shall be in addition to the service establishment or reinstatement charge provided for in Section 13.04.060.

(Ord. No. 1079, 11-3-2014)

Chapter 13.10 RECLAIMED WATER

Editor's note—Chapter 13.10, Reclaimed Water, replaces City of Hobbs Ordinance No. 646, adopted February 3, 1975, which established a rate for the sale of certain treated industrial process water. Ordinance No. 646, including existing industrial process water agreements, have been saved from repeal by the ordinance adopting this codification and may be found on file in the office of the City Clerk.

13.10.010 Definitions.

For the purposes of Section 13.08.100, the following words and phrases shall have the meanings respectively described to them by this section:

"Agronomic rate" means the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants.

"Class 1A reclaimed wastewater" means the highest quality reclaimed wastewater in accordance with NMED's "Policy for the Above Ground Use of Reclaimed Domestic Wastewater, 2003."

"Class 1B reclaimed wastewater" means the second highest quality reclaimed wastewater in accordance with NMED's "Policy for the Above Ground Use of Reclaimed Domestic Wastewater, 2003."

"Director" means the City of Hobbs Utilities Director, or his/her designee, as authorized by the City Manager.

"Groundwater" means water located beneath the land surface.

"Potable water" means water suitable for human consumption as drinking water or in the preparation of food.

"Reclaimed water" means wastewater derived from homes, businesses and industries that has been treated to the standards required for the specific uses set forth in the New Mexico Environment Department's "Policy for the Above Ground Use of Reclaimed Domestic Wastewater, 2003."

"Reuse" means the application of appropriately treated wastewater for an approved purpose.
(Ord. No. 1079, 11-3-2014)

13.10.020 Abbreviations.

For purposes of this chapter the following abbreviations shall have the meanings respectively assigned to them by this section:

A. EPA - U.S. Environmental Protection Agency

B. NMED - New Mexico Environmental Department

C. WWRF - Waste Water Reclamation Facility
(Ord. No. 1079, 11-3-2014)

13.10.030 Applicability.

This chapter is applicable to users of reclaimed water, as defined in this chapter, and is not applicable to water, sewer, or normal domestic wastewater, unless otherwise specified herein. Applications for connection to the reclaimed water system shall be submitted to the director for consideration. Approval shall be based upon the intended usage and availability, as well as the quality of reclaimed water requested. Prior to any usage of reclaimed water being granted, a reclaimed water compliance plan consistent with City of Hobbs, NMED and EPA regulations must be submitted and approved by the director.
(Ord. No. 1079, 11-3-2014)

13.10.040 Rates.

The usage and volumetric rates charged to customers for the use of reclaimed water shall be established by resolution of the City Commission. Copies of such resolutions may be found on file in the office of the City Clerk.
(Ord. No. 1079, 11-3-2014)

13.10.050 Prohibited uses.

Reclaimed water shall only be utilized for approved uses and its usage is to be conducted in compliance with applicable City of Hobbs, State and Federal regula-

tions and laws. It is the responsibility of the user to comply with these regulations and laws. No physical connection between any potable water supply and reclaimed water shall be allowed without use of an approved backflow preventer. Such costs to comply with applicable regulations and laws are the responsibility of the user.
(Ord. No. 1079, 11-3-2014)

13.10.060 Enforcement.

Except as otherwise provided in this chapter, the Utilities Director, or his or her designee, shall administer, implement and enforce the provisions of this chapter as authorized by the City Manager. Any powers granted to, or duties imposed upon, the Utilities Director may be delegated by the Utilities Director to other City personnel.
(Ord. No. 1079, 11-3-2014)

13.10.070 Additional regulations not contained in chapter.

Additional regulations not contained in this chapter regarding the use of and policies of the City concerning reclaimed water shall be established by municipal resolutions.
(Ord. No. 1079, 11-3-2014)

13.10.080 Additional reclaimed water service policies not included in chapter.

The City Commission may from time to time adopt and revise policies with regard to reclaimed water service in addition to the regulations set forth in this chapter and other City ordinances. Copies of such policies may be found on file in the office of the City Clerk.
(Ord. No. 1079, 11-3-2014)

13.10.090 Clarification of terms

The term "reclaimed water" within this chapter is the equivalent, and is also defined as industrial process water(s), industrial processed water(s), treated effluent water, treated effluent, effluent, or similar definitions in City documents, policies, ordinances, resolutions, agreements and contracts. These documents, policies, ordinances, resolutions, agreements and contracts remain in place and intact with this clarification.
(Ord. No. 1079, 11-3-2014)

Chapter 13.12 INDUSTRIAL WASTES AND PRETREATMENT

13.12.010 Definitions.

For the purposes of this chapter and unless a provision explicitly states otherwise, the following words and phrases shall have the meanings respectively assigned to them by this section:

"Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

"Approval authority" means Environmental Protection Agency and State of New Mexico.

"Biochemical oxygen demand (BOD)" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees Centigrade expressed in terms of mass and concentration (milligrams per liter (mg/l)).

"Categorical pretreatment standard" or "categorical standard" means any regulation containing pollutant discharge limits promulgated by the U.S. EPA.

"Chemical oxygen demand (COD)" means a measure of the oxygen consuming capacity of organic and inorganic matter in wastewater expressed in terms of mass and concentration (milligrams per liter (mg/l)).

"City" means the City of Hobbs, New Mexico.

"Color" means the optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred (100) percent transmittance is equivalent to zero optical density.

"Environmental Protection Agency" or "EPA" means the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for other duly authorized official of said agency.

"Hauled liquid waste" means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

"Indirect discharge (discharge)" means the introduction of pollutants into the POTW from any nondomestic source regulated by the UPDES program and/or the U.S. Water Quality Act 307 B, C and D.

"Industrial user (user)" means any non-municipal user who is a source or potential source of discharge or indirect discharge.

"Instantaneous maximum allowable discharge limit" means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any grab or composite sample collected.

"Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both: (1) inhibits or disrupts the POTW; and (2) causes a violation of all applicable permit(s) or noncompliance with any local, State or Federal regulations.

"Medical waste" means isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

"Noncontact cooling water" means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

"Pass through" means a discharge which exits the POTW in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the discharge permit(s). Included is that which causes an increase in the magnitude or duration of a violation.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State or local government entities.

"pH" means a measure of the acidity or alkalinity of a substance, expressed in standard units (SU).

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW.

"Pretreatment requirements" means any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a national pretreatment standard.

"Pretreatment standards" or "standards" means categorical pretreatment standards and local limits established by the City.

"Prohibited discharge standards" or "prohibited discharges" means absolute prohibitions against the discharge of certain substances or certain wastewater characteristics.

"Publicly owned treatment works (POTW)" means those treatment works and systems which are owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of municipal/domestic sewage or industrial wastes of a liquid nature discharged into the sanitary sewer system. Also included are any conveyances, such as pipelines, conduits or channels which convey wastewater to the treatment plant(s).

"Sewage" means human excrement and gray water (household showers, dish washing operations, etc.).

"Significant industrial user" means and applies to industrial users subject to categorical pretreatment standards and any other industrial user that: discharges an average of twenty-five thousand (25,000) gallons per day (gpd) or more of process wastewater (excludes sanitary, noncontact cooling and boiler blow-down wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or is designated as significant by the City of Hobbs on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

"Slug load/discharge" means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards of this chapter or any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge.

"Storm water" means any flow which occur during or following any form of natural precipitation, and results from such an event, including snow melt.

"Total suspended solids (TSS)" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

"Toxic pollutant" means one (1) of one hundred twenty-six (126) pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA.

"Treatment plant effluent" means any discharge from the POTW.

"Utilities Director" means the person designated by the City of Hobbs to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this chapter or his or her duly authorized representative.

"Wastewater" means liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater treatment plant" or "treatment plant" or "wastewater reclamation facility" means that portion of the POTW designed to provide treatment, recycling, and reclamation of sewage and industrial waste.
(Ord. No. 1079, 11-3-2014)

13.12.020 Abbreviations.

For purposes of this chapter the following abbreviations shall have the meanings respectively assigned to them by this section:

A. BOD - Biochemical oxygen demand;

B. CFR - Code of Federal Regulations;

C. COD - Chemical oxygen demand;

D. EPA - U.S. Environmental Protection Agency;

E. GPD - gallons per day;

F. MG - milligrams;

G. MG/L - milligrams per liter;

H. NPDES - National Pollutant Discharge Elimination System;

I. O&M - Operation and maintenance;

J. POTW - Publicly owned treatment works;

K. RCRA - Resource Conservation and Recovery Act;

L. SIC - Standard industrial classification;

M. TSS - Total suspended solids.
(Ord. No. 1079, 11-3-2014)

13.12.030 Applicability.

This chapter is applicable to industrial users, as defined in this chapter, and is not applicable to normal domestic wastewater unless otherwise specified herein.
(Ord. No. 1079, 11-3-2014)

13.12.040 Prohibited discharge standards.

No industrial user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not the source is subject to categorical pretreatment standards or any other National, State or local pretreatment standards or requirement. Furthermore, no user may contribute the following substances to the POTW:

A. Pollutants which create a fire or explosive hazard in the POTW system, including, but not limited to, waste streams with a closed-cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Centigrade);

B. Any pollutants which will cause, but in no case discharges with a pH of less than 5.5 or more than 9.5, corrosive structural damage to the POTW or equipment, or endangering City personnel;

C. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, such as, but not limited to: ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, whole blood, paunch manure, hair and fleshings, entrails, un-ground garbage and paper dishes, cups, milk containers, etc., and lime slurry, lime residues, slops, chemical residues, paint residues or bulk solids;

D. Any pollutant, including oxygen demanding pollutants (BOD, etc.), released as discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

E. Any wastewater having a temperature greater than one hundred fifty (150) degrees Fahrenheit (sixty-five (65) degrees Centigrade);

F. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

G. Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute or chronic worker health and safety problems;

H. Any trucked or hauled pollutants, except at discharge points designated by the City;

I. Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair;

J. Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;

K. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the City Manager in compliance with applicable State or Federal regulations;

L. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, non-contact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the City Manager;

M. Any sludges, screenings, or other residues from the pretreatment of industrial wastes;

N. Any medical wastes, except as specifically authorized by the Utilities Director in a wastewater discharge permit;

O. Any wastewater causing the treatment plant effluent to fail a toxicity test. Any herbicides or pesticides;

P. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the POTW;

Q. Any discharge of fats, oils, or greases of animal or vegetable origin is limited to one hundred fifty (150) mg/l.

Pollutants prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW. If the industrial user storing the specified pollutant does not have a pretreatment facility, the floor drain shall be either plugged with concrete or valved. The valve shall be locked closed at all times and opened only with permission from the City. Containment structures/vessels may be approved upon inspection by the City.
(Ord. No. 1079, 11-3-2014)

13.12.050 Categorical pretreatment standards.

The national categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405—471 are hereby incorporated.
(Ord. No. 1079, 11-3-2014)

13.12.060 State pretreatment requirements.

State of New Mexico pretreatment standards and requirements are hereby incorporated.
(Ord. No. 1079, 11-3-2014)

13.12.070 City of Hobbs local limits.

A. The City of Hobbs reserves the right to establish by ordinance, resolution, or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW if deemed necessary to comply with local, State or Federal regulations. The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following (instantaneous maximum allowable discharge limits):

0.05 mg/l arsenic;

0.01 mg/l cadmium;

0.01 mg/l chromium (total);

0.01 mg/l copper;

0.01 mg/l cyanide;

0.05 mg/l lead;

0.001 mg/l mercury;

0.01 mg/l molybdenum;

0.10 mg/l nickel;

0.05 mg/l silver;

0.50 mg/l zinc;

150 mg/l oil and grease;

250 mg/l total suspended solids;

250 mg/l BOD_5

B. Local limits apply at the point where the indirect discharge is introduced to the POTW before mixing with other wastewaters. All concentrations for metallic substances are for "total" metal unless indicated otherwise. In addition to, or in place of, concentration based limitations, the Utilities Director may impose mass limitations. (Ord. No. 1079, 11-3-2014)

13.12.080 Industrial waste survey.

A. Industrial users may be requested to submit information on the nature and characteristics of their wastewater and a baseline monitoring report prior to commencing discharge; when changes in the industrial users' ownership occur; or upon any significant process changes resulting in a change of industrial users discharge volumes or characteristics. Providing false information; failure to provide notification; failure to complete the pretreatment questionnaire shall be considered a violation of the ordinance codified in this chapter.

B. All industrial users, who are not subject to categorical pretreatment standards, not classified as a significant user, and not required to obtain a wastewater discharge permit, shall provide appropriate information to the City as may be required to determine compliance with the ordinance codified in this chapter.
(Ord. No. 1079, 11-3-2014)

13.12.090 Hazardous waste discharge notification.

Any industrial user who discharges hazardous waste into the POTW shall notify the City, in writing of any substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.
(Ord. No. 1079, 11-3-2014)

13.12.100 Pretreatment operations.

A. Industrial users shall provide wastewater treatment as needed to comply, and shall achieve compliance, within the time limitations specified by the EPA, the State, or City, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted for review and shall be acceptable to the City, before construction of the facility.

B. The City may require industrial users to restrict their discharge during peak flow periods, designate certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate municipal waste streams

from industrial waste streams, and such other conditions as may be necessary to protect the POTW and secure the industrial user's compliance with the requirements of this chapter.

C. Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interceptor units shall be of type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected and cleaned, regularly, as needed, by the owner at his or her expense. Owner shall keep records of interceptor maintenance, cleaning and disposal for a minimum of one (1) year.

D. Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter. At no time shall two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.
(Ord. No. 1079, 11-3-2014)

13.12.110 Tenant responsibility.

Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of the ordinance codified in this chapter.
(Ord. No. 1079, 11-3-2014)

13.12.120 Wastewater discharge permit requirement.

It is unlawful for any significant industrial user to discharge wastewater into the City of Hobbs POTW without first obtaining a wastewater discharge permit. Obtaining a wastewater discharge permit does not relieve any permit holder of its obligation to comply with all Federal and State permits or regulations.

A. Existing Connections. Any significant industrial user which has an indirect discharge into the POTW prior to the effective date of the ordinance codified in this chapter and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply for a wastewater discharge permit.

B. New Connections. Any significant industrial user proposing to begin or recommence discharging industrial wastes into the POTW must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge begins. The City has the right to place conditions on new or increased contributions from existing users.

The Utilities Director may require other industrial users, including liquid waste haulers, to obtain discharge permits as necessary to carry out the purposes of this chapter.
(Ord. No. 1079, 11-3-2014)

13.12.130 Wastewater discharge permits.

A. Wastewater discharge permits shall be issued by the Utilities Director for a period not to exceed five (5) years and are non-transferable without approval from the City. Discharge permits shall include those conditions as are reasonably deemed necessary by the City to prevent pass through or interference, protect the environment receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the POTW.

B. Modification of a wastewater discharge permit may be made by the City for good cause, including but not limited to the following: (1) incorporation of new or revised Federal, State or local requirements; (2) a change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge; (3) violation of any terms or conditions of applicable discharge permits; or (4) to reflect a transfer of the facility ownership and/or operation. Any person, including the industrial user, may petition the City of Hobbs to reconsider the terms of a wastewater discharge permit within ninety (90) days of its issuance.

C. The City may decline to reissue a wastewater discharge permit to any user who has failed to comply with the provisions of this chapter, any compliance orders issued pursuant to the chapter, or a previous wastewater discharge permit issued hereunder, unless such user first files a satisfactory bond, payable to the City of Hobbs, in a sum not to exceed a value determined to be necessary to achieve consistent compliance or has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.
(Ord. No. 1079, 11-3-2014)

13.12.140 Confidential information and requirement to publish.

A. Information and data on an industrial user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction unless the industrial user specifically requests, and is able to demonstrate to the satisfaction of the City of Hobbs, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable law. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

B. The City shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the industrial users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall mean:

1. Chronic Violations. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of wastewater measurements taken during a six-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
2. TRC Violations. Technical review criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
3. Discharge Violations. Any other discharge violation that the City believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel or the general public);
4. Endangerment. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
5. Failure to Comply. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

6. Failure to Report. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

7. Failure to accurately report noncompliance.

(Ord. No. 1079, 11-3-2014)

13.12.150 Violation of industrial waste ordinance.

A. When it is found that a user has violated or is violating the provisions of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment requirement, the Utilities Director or his or her designee may serve upon said user a written "Notice of Violation." Within thirty (30) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the City. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a "Notice of Violation."

B. Upon continued violation of industrial waste ordinance, wastewater discharge permits, or orders issued hereunder, or any other pretreatment standard or requirement, the City may issue a "Compliance Order" to the user responsible for the discharge directing that the user come into compliance within thirty (30) days. If the user does not come into compliance within thirty (30) days, a "Cease and Desist Order" will be issued directing user to immediately comply with all requirements or water and sewer service may be discontinued. Issuance of a "Compliance Order" shall not be a prerequisite to taking any other action against the user.

C. Notwithstanding any other section of this chapter, any user found to have violated any provision of the ordinance codified in this chapter, its wastewater discharge permit, orders issued hereunder, or any other pretreatment standard or requirement may be assessed an administrative fine as established by resolution of the City Commission. Such fine(s) shall be assessed for each individual violation on a per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation. Assessments may be added to the user's next scheduled sewer service charge or other collection remedies as may be available for other service charges and fees. Issuance of an administrative fine shall not be a prerequisite for taking any other action against the user.

(Ord. No. 1079, 11-3-2014)

13.12.160 Emergency suspensions.

The Utilities Director may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of any people. The Utilities Director may also suspend a user's discharge (after notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
(Ord. No. 1079, 11-3-2014)

13.12.170 Civil fine pass through recovery.

In the event that an industrial user discharges such pollutants which cause the City to violate any conditions of its applicable Federal or State issued permits, and the City is fined for such violations, then such industrial user shall be fully liable for the total amount of the fines and civil penalties assessed against the City and those administrative costs incurred. The Utilities Director may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this chapter, any order, or a previous wastewater discharge permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.
(Ord. No. 1079, 11-3-2014)

13.12.180 Public nuisances.

Any violation of this chapter, wastewater discharge permits, or orders issued hereunder, is declared a public nuisance and shall be corrected or abated as directed by the Utilities Director or his or her designee. Any person(s) creating a public nuisance shall be subject to the provisions of law governing such nuisances, including reimbursing the City for any costs incurred in removing, abating or remedying such nuisance.
(Ord. No. 1079, 11-3-2014)

13.12.190 Industrial pretreatment fees.

The City Commission, by resolution, shall establish reasonable charges and fees for reimbursement of the cost of setting up and operating the City of Hobbs Pretreatment Program. These fees may include:

A. Fees for wastewater discharge permit applications, including the cost of processing such applications;

B. Fees for monitoring, inspection, and surveillance procedures, including the cost of collecting and analyzing an industrial user's discharge, and reviewing monitoring reports submitted by industrial users; and

C. Other fees deemed necessary to carry out the requirements contained in this chapter.

(Ord. No. 1079, 11-3-2014)

13.12.200 Industrial wastewater surcharge.

The purpose of the industrial wastewater surcharge is that the industrial user shall pay for that cost, in addition to the usual monthly sewer service charge, incurred by the City in the additional construction, operation, and maintenance of the POTW required for handling the above normal strength industrial wastewater. Above normal strength industrial wastewater shall be that waste stream which exceeds City of Hobbs local limits established in Section 3.12.070 and approved for discharge in a wastewater discharge permit. Waste stream volume for the computation of surcharge shall be based upon the user's monthly wastewater flow per Section 13.08.100. If determined that it is not practical to measure the quantity or quality of industrial waste stream by such method, the Utilities Director may approve the individual measurement of such waste stream separately by a manner or method determined to be most practical. Costs associated with the alternative measurement of quantity or quality of industrial waste stream shall be borne by industrial user. To determine monthly service charge, including surcharge, the following computation shall be used:

$$SC + (K)(V) \quad \left[a\,\frac{(TSS-250)}{250} + b\,\frac{(BOD-250)}{250} + c\,\frac{(COD-400)}{400}\right]$$

SC = Monthly industrial user service charge, dollars per month

K = Usage charge for industrial users, dollars per thousand gallons sewer

V = Volume of waste stream discharged

a = That fraction of the total cost which is attributable to total suspended solids removal

b = That fraction of the total cost which is attributable to biochemical oxygen removal

c = That fraction of the total cost which is attributable to chemical oxygen removal demand

TSS = Total suspended solids of industrial waste stream, average untreated wastewater TSS is two hundred fifty (250) mg/l

BOD = Biochemical oxygen demand of industrial waste stream, average untreated wastewater BOD is two hundred fifty (250) mg/l

COD = Chemical oxygen demand of industrial waste stream, average untreated wastewater COD is four hundred (400) mg/l

(Ord. No. 1079, 11-3-2014)

13.12.210 Liquid hauled waste.

Hauled septic tank waste and industrial waste may be accepted into the POTW at a designated receiving structure within the treatment plant area, and at such times as established by the Utilities Director, provided such wastes do not violate this chapter or any other requirements established or adopted. Samples may be collected of each load to ensure compliance with applicable standards and for determination of surcharges. The Utilities Director shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation or violate the ordinance codified in this chapter. The discharge of all liquid hauled wastes requires prior approval and a discharge permit from the City as directed in Section 13.12.130 and issued by the Utilities Director. Liquid waste haulers are subject to all other sections of this chapter.

(Ord. No. 1079, 11-3-2014)

13.12.220 Responsibilities of the hauler.

Only approved liquid waste haulers will be allowed to introduce liquid wastes in the POTW. The following requirements must be met by the hauler prior to and during the duration of issued permit:

A. Equipment used in the transporting of liquid waste shall be properly equipped to perform the task without spillage, leaks, or release of toxic or harmful gases, fumes or other substances;

B. Proof of vehicle insurance, copies of valid driver's licenses for each driver employed by the hauler, and credit information for disposal fees shall be provided and maintained as required;

C. A waste tracking form shall be provided and completed with every load. At a minimum, the form shall include the name and address of hauler; truck identification; names and addresses of the sources of hauled waste, including type of industry if applicable, and volume of waste;

D. Hauler shall be responsible for maintaining that area within the POTW designated for liquid waste disposal;

E. Inappropriate behavior, operation of haul vehicles by unlicensed personnel, damage to any structure or tampering with any equipment of the POTW is unacceptable and will result in permit revocation by the Utilities Director.

(Ord. No. 1079, 11-3-2014)

13.12.230 Liquid hauled waste fees.

City issued trip ticket books are to be obtained by the transporter of liquid hauled waste from the City of Hobbs Utilities Department. Trip ticket books, consisting of fifty (50) tickets, are a three-part form that will be used to document the generation, transportation and disposal of all applicable liquid wastes to be introduced into the POTW. The City Commission, by municipal resolution, shall establish hauled liquid waste disposal fees. Copies of such resolutions may be found on file in the office of the City Clerk. For billing purposes, volume of waste will be based upon the maximum carrying capacity of the respective tanker.

All services may be discontinued and the following charges shall be assessed to liquid waste haulers delinquent in their accounts or found to have damaged or tampered with any City structure, equipment, or appurtenances:

A. Late payment fee for non-payment $100.00

When the charges therefor remain unpaid for forty-five (45) days after the billing date, a delinquent account charge or late payment fee shall be applied to the account at that time and the account becomes subject to discontinuance of all services. All charges, penalties, fees, etc., assessed to a delinquent liquid waste hauler's account must be paid in full prior to reinstatement of any utilities services.

B. Charge for tampering with or damaging utilities services and/or

appurtenances $100.00

In addition to the charge for tampering with or damaging utilities services, liquid waste haulers shall be charged the actual cost of any repairs and/or replacement of damaged equipment and/or appurtenances and the costs thereof shall be included as an additional charge on the liquid waste hauler's account.

C. If a liquid waste hauler fails to pay all charges within sixty (60) days from written notice of delinquent account, the City may impose a lien against the liquid waste hauler and the lien shall draw interest at the statutory limit from the date of the lien to the date of payment, which lien shall be coequal with the lien of other taxes and prior and superior to all other liens.

It shall be the duty of the City Clerk to make out, sign, attest with the City seal and file for record with the County Clerk a claim for lien for the amount due.

If such amount due, with interest, is not paid, the City may, at its option, foreclose its lien against the owner and the property as named in the lien, as provided by law for the foreclosure of municipal liens, for the unpaid amount, interest and attorney's fee.

(Ord. No. 1079, 11-3-2014)

13.12.240 Enforcement.

Except as otherwise provided in this chapter, the Utilities Director or his or her designee, shall administer, implement and enforce the provisions of this chapter as authorized by the City Manager. Any powers granted to, or duties imposed upon, the Utilities Director may be delegated by the Utilities Director to other City personnel. (Ord. No. 1079, 11-3-2014)

13.12.250 Violations.

Every owner or other person or occupant convicted of a violation of this chapter shall be punishable as provided by local, State or Federal law. The conviction and punishment of any owner or other person or occupant for a violation shall not excuse or exempt them from any fees due or unpaid at the time of such conviction, and nothing in this section shall prevent a criminal prosecution of any violation of

the provisions of this chapter. No property of any person shall be exempt from levy and sale of execution issued for the collection of a judgment for any fee imposed by this chapter.
(Ord. No. 1079, 11-3-2014)

Chapter 13.20 REGULATIONS FOR WATER CONSERVATION, WATER RESTRICTIONS AND WATER WASTE

13.20.010 Water conservation and water restrictions

A. The City of Hobbs hereby establishes a designated period of City wide water conservation that begins on each May 15th and continues through September 15th of each year. The following water conservation measures shall be in effect for all consumers connected to the City's water distribution system. No domestic or commercial water shall be used for garden, lawn, or other exterior watering or sprinkling application, except from the water mains of and upon the premises having an even street address on even calendar days and having an odd street address on odd calendar days. In the case of corner buildings having both odd and even address numbers, and any other ambiguity, the address listed on the consumer's account with the City's utilities department shall control.

B. During the water conservation period from May 15th through September 15th of each year, all outdoor watering of grass, trees, plants, or other vegetation shall occur only during one of the following designated watering periods each day and only on the corresponding odd or even calendar day for each address:

1. Between the hours of four a.m. and eight a.m.; or

2. Between the hours of seven p.m. and eleven p.m.

C. On the 31st day of months having thirty-one (31) days, no watering shall be allowed.

D. Such water restrictions shall not apply to water usage applied primarily in the course and conduct of a business activity, provided a special permit is duly applied for in writing describing in detail the purpose, amount, manner and location for the water use. Water may only then be used in the amount, manner, and location as described in the special permit that is issued to such business entity by the City of Hobbs Utilities Director or his or her designee. Such special permits shall be effective for no more than thirty (30) days and may be rescinded at any time for severe water restriction purposes.

E. During water restriction periods, upon written application for a special permit, the City of Hobbs Utilities Director or his or her designee may issue a special permit for daily watering for twenty-one (21) days for new seed, or ten (10) days for new sod, or for a time determined appropriate for other exceptional requirements, permitting daily watering during designated hours. Such special permits may be rescinded at any time for severe water restriction purposes.

F. In the event that conditions exist that adversely affect the availability of water due to climatic conditions, plant breakdown, capacity of the treatment plant(s), low water supply, or otherwise, the City Manager, or acting City Manager in his or her absence, may declare a water emergency and establish further restrictions or prohibitions for any water application or usage. If the City Manager takes such action, the action shall be placed upon the agenda of the City Commission not later than the next regularly scheduled meeting of the City Commission for approval, amendment, or disapproval. If approved or approved as modified, such approval shall be made by Commission resolution specifically setting forth the provisions of the restrictions in full. The City Manager shall take steps as seems most effective to inform the public.

G. The City Commission may from time to time adopt and revise policies and plans with regard to water conservation, water restrictions, and water waste in addition to the regulations set forth in this chapter and other City ordinances, policies and resolutions. Copies of such policies and plans may be found on file in the office of the City Clerk.
(Ord. No. 1079, 11-3-2014)

13.20.020 Water waste.

A. No person, firm, corporation, or municipal or other government facility or operation shall waste, cause or permit any water to be wasted.

B. No person, firm, corporation, or municipal or other government facility or operation shall cause or permit the flow of fugitive water onto adjacent property or public right-of-way.

C. Water wasting activities that are prohibited include:

1. Landscape watering on the wrong day and/or wrong time.

2. Allowing water to escape from any premises onto public property, such as alleys or streets, or upon any other person's property (fugitive water).

3. Allowing water to pond in any street or parking lot to a depth greater than one-half (1/2) inch or to permit water to pond over a cumulative surface area greater than one hundred fifty (150) square feet on any street or parking lot.
4. Washing vehicles, structures, driveways, sidewalks, parking areas, or other impervious surface areas with an open hose.
5. Washing vehicles, structures, driveways, sidewalks, parking areas, or other impervious surface areas with a spray nozzle attached to an open hose, or under regular or system pressure, except when required to eliminate conditions that threaten public health, safety or welfare. This restriction does not apply to residential customers.
6. Operating a misting system in unoccupied non-residential areas.
7. Operating a permanently installed irrigation system with a broken head or emitter, or with a head that is spraying more than ten (10) percent of the spray onto the street, parking lot, or sidewalk.
8. Failing to repair a controllable leak, including a broken sprinkler head, a leaking valve, a leaking faucet, a leaking toilet, or a leaking supply line or pipe.

D. The restrictions in subsections A, B, and C of this section do not apply to the following:

1. Storm runoff allowed under the provisions of the City of Hobbs ordinances, resolutions and/or policies as currently adopted or subsequently amended;
2. Flow resulting from temporary water supply system failures or malfunctions. These failures or malfunctions shall be repaired within forty-eight (48) hours of notification or the system shall be shut off until repairs can be completed;
3. Flow resulting from firefighting or routine inspection of fire hydrants or from fire training activities;
4. Water applied as a dust control measure;
5. Water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology;
6. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;
7. Flow resulting from routine inspection, operation, or maintenance of a utility water supply system;

8. Water used in the course of installation or maintenance of traffic flow control devices;
9. Water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

(Ord. No. 1079, 11-3-2014)

13.20.030 Special assessments for violation of restrictions.

In the event of the violation of the water restrictions or water waste restrictions, a notice of special assessment setting forth with particularity the violations alleged, shall be personally served upon a member of the household or employee of the business, eighteen (18) years or over, or mailed by certified or registered mail, return receipt requested, to the party in whose name and at the address in which the water services are provided. Such special assessment for the first violation of emergency water restrictions or water waste restrictions in any calendar year shall be fifty dollars ($50.00), a second violation one hundred dollars ($100.00), and for a third or additional such violation three hundred dollars ($300.00). Unless appealed, such special assessment or assessments shall be included as an additional water usage charge on the next billing cycle. If any individual, business, or group persistently violates the provisions herein set forth, the City may seek judicial injunctive relief to secure compliance with these restrictions.

(Ord. No. 1079, 11-3-2014)

13.20.040 Appeal—Injunctive relief.

Within seven (7) days of receipt of any notice of special assessment, an appeal may be filed with the City Clerk, and a hearing scheduled before the hearing officer of the City. The hearing officer shall be designated by the City Manager or his or her designee, and shall conduct a hearing within ten (10) days of receipt of appeal. The burden of proof shall be upon the City to substantiate the allegations of violation of watering restrictions, and in the event of finding of such violation may suspend the special assessment, upon adequate assurances of future compliance, in the event of a first-time violation. Any special assessment sustained following appeal shall be included in the next billing cycle. The decision of the hearing officer shall be final, and subject to further appeal only to the City Commission, whose decision shall be final. Nothing herein shall be construed to otherwise restrict the City from seeking judicial injunctive relief to secure compliance with the restrictions herein set forth.

(Ord. No. 1079, 11-3-2014)

Chapter 13.24 REGULATIONS FOR SANITARY AND STORM SEWERS

13.24.010 Conditions for discharge.

A. No person shall place, deposit or discharge, or cause to be placed, deposited or discharged, upon public or privately owned property any wastewaters within the corporate limits of the City unless approved by all applicable Federal, State and local agencies.

B. No person shall deposit or discharge, or cause to be deposited or discharged, to any wastewater or storm-water collection facilities, any solid, liquid or gaseous waste unless through a connection approved under the terms of this chapter and the Utility Department policies.

C. No person shall discharge any sewage, waste or material, industrial waste or any polluted water into a stream or in the air or onto the land, except where the person has made and provided for treatment of such wastes which will render the content of such discharge in accordance with applicable local, State and Federal laws, ordinances and regulations.
(Ord. No. 1079, 11-3-2014)

13.24.020 National Pollutant Discharge Elimination System (NPDES) permits.

In the case of natural outlet discharges of liquid, solid or gaseous waste from property located within the City, each owner or operator shall furnish the City an approved National Pollutant Discharge Elimination System (NPDES) permit setting forth the effluent limits for the discharge and if applicable the effluent limits to be achieved by such pretreatment facilities and a schedule for achieving compliance with such limits by the required date. The NPDES permit shall be kept on file with the Emergency Management Department and updated by the owner or operator with such information as periodically required by the City, State or Federal agencies.
(Ord. No. 1079, 11-3-2014)

Chapter 13.28 WATER WELLS

13.28.010 Restrictions upon drilling of water wells within the City limits.

A. It shall be unlawful for any person, firm, or entity to drill, deepen, or cause to be drilled, any water well or any well capable of producing water within the City of Hobbs without written consent of the Hobbs City Commission for good and sufficient cause shown.

B. Pursuant to the Safe Drinking Water Act (SDWA) and applicable State and Federal rules and regulations governing cross connections, cross contamination, and physical separation of conflicting water systems, all water wells located on premises or property connected to the City's water distribution system shall be properly plugged and abandoned in accordance with New Mexico Environment Department (NMED) rules and regulations. It shall be unlawful for the owner of any premises or property connected to the City's water distribution system to allow any water well to remain in operation and not properly plugged and abandoned.

C. Upon violation of this section, any person, firm or entity found guilty shall be punishable by fine not to exceed five hundred dollars ($500.00) per violation and the City of Hobbs may, at its discretion, seek injunctive relief in a court of competent jurisdiction against any person violating this section.
(Ord. No. 1079, 11-3-2014)

Title 14

RESERVED

Title 15

BUILDINGS AND CONSTRUCTION

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15.04.020 Power, duties and enforcement by building inspection department.
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Chapter 15.04 BUILDING CODE ADOPTED AND GENERAL PROVISIONS*

15.04.010 Building Codes.

Articles 14.7.2 and 14.7.3 of the New Mexico Administrative Code, as amended from time to time, commonly cited as the Commercial Building Code and the Residential Building Code which encompasses the International Building Code, are hereby adopted as the City's Building Codes. A copy of the articles shall be available for inspection at the office of the City Clerk during the normal and regular business hours of the City Clerk.

Article 14.10.4 of the New Mexico Administrative Code, as amended from time to time, commonly cited as the New Mexico Electrical Code and National Electrical Code, are hereby adopted as the City's Building Code. A copy of the article shall be available for inspection at the office of the City Clerk during the normal and regular business hours of the City Clerk.

Articles 14.8.2, 14.9.2, 14.9.6 and 14.8.3 of the New Mexico Administrative Code, as amended from time to time, commonly cited as the New Mexico Plumbing Code, New Mexico Mechanical Code, New Mexico Solar Energy Code and New Mexico Swimming Pool, Spa, and Hot Tub Code, are hereby adopted as the City's Plumbing and Mechanical Codes. A copy of the articles shall be available for inspection at the office of the City Clerk during the normal and regular business hours of the City Clerk.
(Ord. No. 992, § 3, 6-16-2008; Ord. No. 1047, 10-17-2011; Ord. No. 1062, 2-19-2013; Ord. No. 1075, 7-7-2014)

Editor's note—Ord. No. 1047, adopted Oct. 17, 2011, changed the title of § 15.04.010 from 2006 New Mexico Commercial Building Code, International Building Code, 2006 Edition to Building Code.

15.04.020 Power, duties and enforcement by building inspection department.

The building code adopted by Section 15.04.010(A) shall be enforced by the building official or authorized agent. The building official is directed and empowered to enforce such rules and regulations necessary to carry out the duties of his or her office and more specifically to issue orders in conjunction with the Fire Marshal in

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***Editor's note—**Ord. No. 992, § 3, adopted June 16, 2008, amended Ch. 15.04, in its entirety, to read as herein set out in §§ 15.04.010—15.04.040. Prior to inclusion of said ordinance, Ch. 15.04 pertained to similar subject matter. See also the Code Comparative Table and Disposition List.

accordance with and as substantially embodied in the applicable provisions of the International Fire Code, 2006 Edition, as adopted in Chapter 8.32 of this Code, and all additions, amendments, appendices and changes as may occur therein.
(Ord. No. 992, § 3, 6-16-2008)

15.04.030 Applicable permit requirements and conformance with applicable provisions.

A. It is unlawful for any person to erect, construct, enlarge, alter, repair, roof, move or remove, convert, demolish, change of occupancy use, build or construct, or cause to be built or constructed in whole or in part, any building, structure or sign, any mechanical, plumbing and electrical construction within the City limits and the extra-territorial zone, without first obtaining a permit and pay the required fee. Such building or structure shall be made to conform to the orders of this title and the codes adopted by Section 15.04.010.

B. All work from which a permit is required shall be subject to inspections by the Building Inspections Department. The minimum inspections required shall be as stated in the current New Mexico Building Code. The building official or agent shall make such inspections or investigations as may deemed necessary to assure compliance of this title and applicable codes.

C. Any permit issued in error or on the basis of incorrect information supplied by applicant or is in violation of this Code, then the building official may, in writing, revoke or suspend the permit as stated in Section 105.6 of the International Building Code and Section R105.6 of the International Residential Code.

D. In the event of violations of this title or construction which is being conducted in a dangerous or unsafe manner, the building official shall immediately issue a correction notice or a notice to stop work and posted at job site. Such notice shall state the conditions and violations of such codes and shall be posted at the job site. Such notice shall not be removed until all violations are corrected and are in compliance with City ordinances.

E. Any person(s), firms or corporation found to be in violation of this section of this Code. The building official shall notify the individual or owner causing to construct and issue a red tag and assessed any penalties and fees as stated in Section 15.28.060 of this Code. In addition, if any person who continues to violate, the City Attorney is authorized to take further actions, both legal and equitable, necessary to assure compliance with this Code.

F. Commercial Building Permit Fee Waivers. The building permit fees for the renovation of a commercial property located in the city limits of Hobbs, which has been deemed "ruined, damaged and dilapidated" by the Hobbs Environmental Department, may be waived. The owner of the commercial property must apply for the appropriate building permit and the fee may be waived by the City manager, or his designee. The City may seek reimbursement from the owner of the waived fees if the renovation is not completed within the allotted time under the permit. All other requirements associated with the building permit must be complied with.
(Ord. No. 992, § 3, 6-16-2008; Ord. No. 1048, 10-17-2011)

15.04.040 General rules and regulations.

A. This title is intended to assure compliance with the City Fire Zones and the various elements of the City's comprehensive plan. The regulations, restrictions and requirements of this title are designed to promote the general health, safety and welfare of the people of the City. Such regulations, restrictions and requirements are deemed necessary in order to provide adequate open spaces for light and air; to prevent undue concentration of population and the overcrowding of land; to secure safety from fire, panic and other dangers; to lessen congestion on the

streets; to facilitate adequate provisions for community utilities, such as transportation, water, sewer, schools, parks and other public requirements; and to conserve and stabilize the value of buildings and land.

B. The regulations, restrictions and requirements of this title shall be held to be the minimum standards necessary to carry out the purpose of this title. This title is not intended to interfere with any easement, restrictive covenant, other agreement between parties or other ordinances. Where this title imposes a greater restriction upon the use of land or buildings, requires a greater setback or requires larger open space than is imposed by other rules, regulations, easements, covenants, agreements or ordinances, the provisions of this title shall govern.

C. The issuance of a manufactured home building permit does not release the applicant from conditions of any applicable subdivision restrictive covenants or deed restrictions or Manufactured Housing Division regulations.

D. Any person applying for a permit shall first file an application in a form furnished by the Building Inspection Department for that purpose. The applicant shall submit two (2) sets of plans and specifications. All other shall comply to Section 106 of the current New Mexico Building Code.
(Ord. No. 992, § 3, 6-16-2008)

Chapter 15.05 DEFINITIONS

15.05.010 Definitions.

For the purposes of this title the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Banner" means any temporary sign of a lightweight fabric or similar material on which a sign is painted or printed and is mounted to a pole or building.

"Billboard" means a 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 code" means the International Building Code promulgated by the International Code Council, New Mexico Building Code and any other code adopted by this jurisdiction.

"Building Inspector/Building Official" means the officer or other designated authority charged with administration and enforcement of this Code.

"Building mounted sign" means a sign entirely supported by or through a building including a canopy sign, marquee sign, projecting sign, roof sign and wall sign.

"Combination sign" means any sign incorporating any combination of the features of pole, projecting and roof signs.

"Community service sign" means any sign which solicits support for or advertises a nonprofit community use, public use or social institution.

"Construction sign" means a sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors and similar individuals or firms having a role or interest with respect to the structure or project.

"Curb line" means the line at the face of the curb nearest to the street or roadway. In the absence of a curb line, the curb line shall be established by the City Engineer.

"Directional/Monument sign" means a sign limited to on site directional and informational messages, principally for pedestrians or vehicular traffic excluding signs erected by governmental entities.

"Display surface" means the area made available by the sign structure for the purpose of displaying the advertising message.

"Electric sign" means any sign containing electrical wiring, excluding signs illuminated by an exterior light source.

"Fire Marshal" means the officer or designated authority charged with administration and enforcement of the International Fire Code.

"Freestanding sign" means any sign not affixed to a building or structure, supported by a structure that are placed on or anchored in the ground and that are independent from any building or other structures, and having its lowest edge ten (10) feet or more above the elevation of the top of curb of the nearest roadway or if no curb the City Engineer will establish the elevation.

"Ground sign" means a sign, including its supporting structure, six (6) feet or less in height measured from the curb, which is placed upon, or supported by the ground independent of a principal building.

"Height of sign" means the vertical distance from the top of the curb to the highest point of the sign.

"IBC Standards" means the International Building Code Standards, promulgated by the International Code Council as adopted by this jurisdiction.

"Illegal sign" means any sign not meeting the requirements of this title.

"Illuminated sign" means any sign which is directly lighted by any on-premises electrical light source, internal or external, except light sources specifically and clearly operated for the purpose of lighting the general area in which the sign is located rather than upon the sign itself.

"Lease" means any agreement whether oral or written by which one party gives to another party the right to erect or maintain an outdoor advertising device on the property of the party owning or controlling the property.

"Marquee" means a permanent roofed structure attached to and supported by the building and projecting over public property.

"Multi-business sign" means a sign that promotes a plaza, mall or similar use with multiple tenants' advertisements.

"Nonconforming sign" means a sign which violates one (1) or more provisions of this title any other requirement contained in, or adopted by reference within, the Hobbs Municipal Code.

"Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State or local law for the purposes of carrying out an official duty or responsibility.

"Off-premise sign" means a sign, the content of which does not refer to a business or merchant doing business on the premises where the sign is displayed.

"On-premises sign" means a sign which advertises or directs attention to a business, product, service or activity which is available on the premises where the sign is located.

"Permanent sign" means a sign which is designated and intended to be anchored to the ground, building or other structure for the duration of the use of the premises.

"Political sign" means a temporary sign pertaining to any national, State or local election or cause which is displayed for a limited period of time.

"Portable signs" means a sign that is designed to be transported and attached temporarily to the ground, a structure or another sign.

"Projecting sign" means a sign other than a wall sign, which projects from and is supported by a wall of a building or structure.

"Projection" means a distance by which a sign extends over public property or beyond the building line.

"Public utility signs" means warning sign, informational sign, notice or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations but is not advertising a product.

"Real estate sign" means a sign intended to be displayed for a limited period of time which advertises the financing, development, sale, transfer, lease, exchange or rent of real property or properties and with a maximum of sixteen (16) square feet for residential property and forty (40) square feet for commercial property.

"Roof sign" means a sign erected upon or above a roof or parapet of a building or structure.

"Sign" means any sign which is used or intended to be used to attract attention to the subject matter for advertising purposes with a minimum of four (4) square feet or greater, other than painting on the surface of a building or temporary use.

"Sign copy" means the letters, numbers, symbols or geometric shapes, either in permanent or changeable form, on a sign face.

"Sign structure" means any structure which supports or is capable of supporting any sign defined in this title.

"Temporary sign" means any sign made of any material intended to be displayed for a limited period of time.

"Wall sign" means any sign attached to or erected against the wall of a building or structure, with the exposed face of the sign in a place parallel to the plane of the wall. (Ord. 922 § 3 (part), 2004)
(Ord. No. 980, § 1B, 3-17-2008; Ord. No. 1094, 4-18-2016)

Chapter 15.08 RESERVED.

Editor's note—Ord. No. 1082, adopted April 6, 2015, repealed Chapter 15.08, which pertained to "Fire Zones" and derived from Prior Code, § 7-4; Ord. No. 885(part) and Ord. No. 922, § 3(part).

Chapter 15.12 HOUSE NUMBERING

15.12.010 Official numbering plat.

The City Engineer is directed to maintain plats showing the numbering of lots and blocks which shall be deemed the official plat for the numbering of houses, residences or buildings within the City and the five (5) mile planning radius of the City. The numbering of any house, residence or building in any other fashion than that indicated on such plat shall be deemed unlawful and corrected in the manner set forth in Section 15.12.040. (Ord. 870 (part), 2001: prior code § 24-33)

15.12.020 Assignment of numbers.

Any new house, residence or building constructed in the City and the five (5) mile planning radius of the City shall be assigned a number by the Engineering Department, and any number posted on such house, residence or building not assigned by the Engineering Department shall be deemed an unlawful number. (Ord. 870 (part), 2001: prior code § 24-34)

15.12.030 Size and placement of numbers.

All numerals placed on residences or buildings for identification purposes as provided in this chapter shall be of sufficient size and color to be visible and shall be placed upon such buildings in a conspicuous place and upon an area clearly visible from the street. (Prior code § 24-35)

15.12.040 Removal of incorrect and placement of correct numbers.

Any house, residence or building upon, which is displayed a number not assigned by the Engineering Department shall be removed by the owner thereof within three (3) days after receipt of written notice from the Engineering Department. In the event the owner or occupant of such house, residence or building does not so remove and place a correct number on such building, the Engineering Department may remove such erroneous number and place thereon the correct number assigned to such property, and the cost thereof shall be assessed to the owner of such property and, until paid, shall constitute a lien against such property in the manner of other municipal liens. (Prior code § 24-36)

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Chapter 15.16 MOVING OF BUILDINGS AND OTHER STRUCTURES*

15.16.010 Compliance required.

Before moving, transporting any house, manufactured or mobile home, building or other structure within the City limits, the movers will first obtain a moving permit and shall comply with the following regulations.
(Ord. No. 992, § 3, 6-16-2008)

15.16.020 Permit application—Required—Contents.

The mover or transporter shall file with the building official an application to move such house, building or other structure with a width of eight and one-half (8.5) feet or greater for temporary buildings or an area of one hundred twenty (120) square feet or greater, that will be used as buildings, storage or similar use, within the City limits. Such application shall be filed with the building official at least twenty-four (24) hours prior to the time moving or transporting such structures. The applications shall contain a description and size of such building or structure and the intended time of transportation and shall set forth the intended route and destination to be taken in the transportation of such building. Any temporary building or structure that is moved under a valid State moving permit will not require a separate City moving permit. Any structure moved within the City limits shall comply with State moving requirements. However, the mover shall deliver a copy of the State moving permit to the building official prior to beginning any move.
(Ord. No. 992, § 3, 6-16-2008)

15.16.030 Permit application and fees.

Before such building or structure is moved, the applicant shall at time of filing application, pay to the City the fees as stated on the fee schedule to cover cost of inspections and processing the application. If a copy of a valid State moving permit is delivered to the building official, no fee will be required.
(Ord. No. 992, § 3, 6-16-2008)

15.16.040 Coordination with above ground utility companies and Police Department.

Before such building or structure with an overall height of thirteen (13) feet six (6) inches is moved or transported as described in Section 15.16.020, the mover shall

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***Editor's note—**Ord. No. 992, § 3, adopted June 16, 2008, amended Ch. 15.16, in its entirety, to read as herein set out in §§ 15.16.010—15.16.080. Prior to inclusion of said ordinance, Ch. 15.16 pertained to similar subject matter. See also the Code Comparative Table and Disposition List.

obtain an application from the building official and coordinate with each above ground utility company and the Police Department a minimum of eighteen (18) hours prior to the intended time of moving.
(Ord. No. 992, § 3, 6-16-2008)

15.16.050 Time of moving and compliance with State regulations.

A. No building, structure, manufactured home or mobile home shall be moved within the City limits on holidays, between thirty (30) minutes after sunset and thirty (30) minutes before sunrise on the next day, or between sunset on Saturday and sunrise on Monday unless a special permit is issued by the building official. All laws, rules and regulations of the State shall be complied with and made a part of this chapter.

B. Manufactured homes or mobile homes shall be regulated in accordance with the correspondence section of the Hobbs Municipal Code.
(Ord. No. 992, § 3, 6-16-2008)

15.16.060 Protection of curbing and pavement.

If it is necessary to transport such building or other structure over curbing, the house mover shall place proper cribbing or blocking and do all things necessary to eliminate damage and destruction to such curbing, gutter, pavement, street or other public property.
(Ord. No. 992, § 3, 6-16-2008)

15.16.070 Insurance.

The house mover shall furnish the building inspector evidence of adequate insurance covering all damage which might result from the transportation or moving of such house.
(Ord. No. 992, § 3, 6-16-2008)

15.16.080 Building permit required when.

If a building or structure described in Section 15.16.020 will be moved to a lot or tract within the City limits, or within extraterritorial zone, a building permit shall be required as stated in Section 15.04.030.
(Ord. No. 992, § 3, 6-16-2008)

Chapter 15.20 CONSTRUCTION SITE REGULATIONS

15.20.010 Temporary fences or walls for construction.

At all times during commercial construction, demolition or the same within the City and for the safety and protection of persons and property, the owner or person doing or causing such work to be done shall, unless released in whole or in part in writing by the City Building Official, erect and maintain along the curb line a distance of eight (8) feet along the street abutting such building operation, or in the event no curb exists, at a distance of eight (8) feet from the property line, a fence or wall, constructed and for use as follows:

The fence shall be six (6) feet in height, built of chain link, durable material or solidly constructed. The space between such fences or walls shall be and remain clear of obstructions, so as to permit pedestrians to pass through the same in safety, and shall at all times during the course of building operations be available for the use of pedestrians. (Ord. 885 (part), 2001: prior code § 7-16)

15.20.020 Temporary street obstructions—Generally.

No owner, builder, contractor or other person shall, during any construction operations within the City, obstruct any portion of any street beyond eight (8) feet from the curb line, unless specifically authorized to do so, in writing, by the City Building Official, and in no event shall any such street obstruction be placed more than thirty (30) feet from the property line, without specific authority therefor by the City Manager or his or her designee. (Ord. 885 (part), 2001: prior code § 7-17)

15.20.030 Off-street parking.

A. The following is the minimum off-street parking requirements for all new commercial construction. Off-street parking shall be any vehicle parked on private property. No vehicle shall exit an off-street parking area by backing up into a public street. Parking shall be a minimum of fifteen (15) feet from front or side street curb or pavement edge or as directed by the Engineering Department to minimize visibility hindrances. All existing and proposed public parking areas, including accesses from the public right-of-way, shall be maintained to assure safe passage of motor vehicles. Parking requirements are as follows:

1. Office or lease space (GFA less storage/warehouse) =
   One (1) space per two hundred (200) sq. ft.
2. Assembly areas = One (1) space per four (4) occupants.

3. Employee parking (areas within parcel not used to meet parking requirements) = Must be contained within a parcel.

4. All parking shall be accessible from an all-weather asphalt or concrete surface at least fifty (50) feet in length.

B. Accessible parking shall be as required by the New Mexico Building Code, Table 1106.1. (Ord. 885 (part), 2001: prior code § 7-18)
(Ord. No. 1060, 2-4-2013)

Chapter 15.24 RESERVED*

Chapter 15.28 BUILDING PERMIT FEE SCHEDULE†

15.28.010 Building permit fees in general.

Valuation*	Fee
1.00 to 2,000	$20.00
2,001 to 5,000	40.00
5,001 to 8,000	60.00
8,001 to 10,000	90.00
10,001 to 20,000	120.00
20,001 to 30,000	150.00
30,001 to 50,000	200.00
50,001 to 70,000	250.00
700,001 to 100,000	320.00
100,001 to 150,000	350.00
150,001 to 200,000	380.00
200,001 to 250,000	480.00
250,001 to 300,000	580.00
300,001 to 350,000	700.00
350,001 to 400,000	800.00

***Editor's note—**At the direction of the city, dated 6-8-2010, the former provisions of Ch. 15.24 have been redesignated as Ch. 18.04 of Title 18, Planning and Development. The former Ch. 15.34 pertained to manufactured homes.

†Editor's note—Ord. No. 992, § 3, adopted June 16, 2008, amended Ch. 15.28, in its entirety, to read as herein set out in §§ 15.28.010—15.28.090. Prior to inclusion of said ordinance, Ch. 15.28 pertained to similar subject matter. See also the Code Comparative Table and Disposition List.

Valuation*	Fee
400,001 and up	800.00 + $1.00 per $1,000.00 thereafter

* Permit fees are based on the total valuation including, materials, labor, electrical, mechanical and plumbing. Refunds are eighty (80) percent of total permit fees paid.

Commercial plan review fees (for new, remodels, additions) are twenty (20) percent of permit fees.
(Ord. No. 992, § 3, 6-16-2008)

15.28.020 Curb cuts, sidewalks, driveways.

Valuation*	Fee
1.00 to 1,000	$ 15.00
1,001 and up	20.00

* Permit fees are based on the total valuation including, materials, labor, electrical, mechanical and plumbing. Refunds are eighty (80) percent of total permit fees paid.
(Ord. No. 992, § 3, 6-16-2008)

15.28.030 Manufactured homes/mobile homes.

Fee: Sixty dollars ($60.00).
(Ord. No. 992, § 3, 6-16-2008)

15.28.040 Moving/relocation fees.

Fee: Thirty dollars ($30.00).
(Ord. No. 992, § 3, 6-16-2008)

15.28.050 Sign/billboards.

Valuation*	Fee
1.00 to 1,000.00	$ 15.00
1,001.00 to 5,000.00	30.00
5,001.00 to 15,000.00	50.00
15,001.00 and up	65.00

* Permit fees are based on the total valuation including, materials, labor, electrical, mechanical and plumbing. Refunds are eighty (80) percent of total permit fees paid.

(Ord. No. 992, § 3, 6-16-2008)

15.28.060 Investigation fee.

Red Tag: double permit fee.

(Ord. No. 992, § 3, 6-16-2008)

15.28.070 Re-inspection fee.

Sixty dollars ($60.00).

(Ord. No. 992, § 3, 6-16-2008)

15.28.080 Mechanical/plumbing residential fees.

Coil	$15.00
Duct Systems	$20.00
Evaporative Cooler	$15.00
Package Unit	$50.00
Gas Wall Heater/appliance	$25.00
Air Handler	$30.00
Gas Furnace	$20.00
Condenser	$15.00
Condenser H.P.	$20.00
Refrigeration System	$25.00
Steam & Condensate Piping	$15.00
Gas Piping Systems	$20.00
Gas Yard Line	$20.00
Other Gas Appliances	$15.00
4" Sewer Tap	$30.00
6" Sewer Tap	$40.00
Kitchen Hoods	$40.00
Radiant Hot Water Heater	$10.00
Domestic Hot Water Heater	$20.00
Roof Drainage System	$10.00
Swimming Pool/Spa	$50.00
Ventilation System	$10.00
Water Conditioners	$10.00
Water Distribution System	$10.00

Water Heater Appliance	$10.00
Grease Trap	$15.00
Sewer Lateral	$10.00
Water Main (yard line)	$10.00
Plumbing with Fixtures	$10.00
Plumbing without Fixtures	$10.00
Mercury Test	$10.00
Sprinkler System	$30.00
Re-Inspection Fee	$60.00
Administration Fee	$10.00

(Ord. No. 992, § 3, 6-16-2008; Ord. No. 1075, 7-7-2014)

Editor's note—Ord. No. 1075, adopted July 7, 2014, changed the title of § 15.28.080 from "Mechanical/plumbing fees (per item)" to "Mechanical/plumbing residential fees." See § 15.28.081 for mechanical/plumbing commercial fees.

15.28.081 Mechanical/plumbing commercial fees.

Each Plumbing Fixture Waste Discharging Device	$4.00
Each Water Distribution System	$4.00
Each Building Sewer	$4.00
Each Water Heater	$4.00
Each Swimming Pool	$50.00
Each Water Conditioner	$6.00
Each Evaporative Cooler	$6.00
Each Vacuum Breaker or Back Flow Device	$4.00
Each Gas Piping System	$6.00
Each Gas Appliance	$4.00
Each Gas Pipe Outlet	$4.00
Each Ventilation System	$6.00
Each Refrigeration System	$6.00
Each Duct Work System	$10.00
Each Domestic Hot Water Solar Heating System	$10.00
Each Solar Space Heating System	$20.00
Each Final Certificate of Approval	$7.50
Each Sewage Ejector/Grinder	$4.00
Each Grease Trap/Interceptor	$4.00
Each Water Service Line	$4.00
Each Gas Yard Line	$4.00
Each Combination Unit (HVAC)	$4.00
Each Fan Coil Unit	$4.00

Each Hot Water Radiant Heating System	$10.00
Each Chilled Water Distribution System	$10.00
Each Steam and Condensate Piping System	$10.00
Each Roof Drainage System	$10.00
Each Chiller	$10.00
Each Cooling Tower	$10.00
Each Commercial Kitchen Hood	$10.00
Each Commercial Duct System	$10.00
Each Medical Gas System	$10.00
Each Range	$4.00
Each Capped Opening	$4.00
Each Central Furnace	$4.00
Each Wall Heater	$4.00
Each Other Gas Unit	$4.00
Each Re-Inspection	$60.00
Administrative Fee	$37.50

(Ord. No. 1075, 7-7-2014)

15.28.090 Electrical permit fees.

Residential Fees

0—100 A Service	$52.00
101—200 A Service	$83.00
201—320 A Service	$115.00
321—400 A Service	$260.00
Over 401	$415.00

Commercial Fees

0—100 A Service	$52.00
101—200 A Service	$83.00
201—400 A Service	$260.00
401—600 A Service	$310.00
601—800 A Service	$360.00
801—1000 A Service	$518.00
1001—2000 A Service	$725.00
Over 2001 A Service	$1,035.00
Sign Connection	$31.00
HVAC Units	$31.00
Swimming Pools	$31.00
Temp. Serv. Pole	$31.00

Low Voltage	$31.00
Others	$31.00
Distribution Lines	$50.00 plus $6.00 × number of poles or $6.00 × 100' of underground
Plan Reviews	Plan review is 20% of permit fees when plans are submitted separately.

(Ord. No. 992, § 3, 6-16-2008; Ord. No. 1063, 3-18-2013)

Chapter 15.32 SIGNS

15.32.010 Purpose and intent.

Regulation of the location, size, placement and certain features of signs is necessary to enable the public to locate goods, services and facilities in the City without difficulty and confusion, to encourage the general attractiveness of the community and to protect property value therein. Accordingly, it is the intention of this chapter to establish regulations governing the display, location, maintenance and inspection of signs which will:

A. Prevent the construction and projection of sign into, above or within public right-of-way and property lines.

B. Protect the public health and general welfare. (Ord. 885 (part), 2001: prior code § 7-19)
(Ord. No. 1094, 4-18-2016)

15.32.020 Application for permit.

Application for a sign permit shall be made in writing upon forms furnished by the Building Official. Such application shall contain the location by street address of the proposed sign and as well as the names and addresses of the owner of the premises where the sign is to be located, the permittee and the sign contractor. The Building Official will require the filing of plan as stated on Sections 15.32.050 and any other pertinent information as is necessary to insure compliance.

Every application shall be executed and the representations made therein certified to be true by both the owner of the premises upon which the sign is to be

constructed, the permittee and the sign company and contractor authorized to erect the structure. Every application shall contain a statement of the owner, the permittee, the sign company and the contractor that the sign and structure does not violate any applicable deed restriction, restricted covenants, setback requirements or State codes.

A plot plan must be furnished as a part of the application that shows location of the sign and structure in relation to subject property boundary lines, improvements, easements, curb lines and rights-of-way.

If the location, plans and specifications set forth in any application for permit conforms to all of the requirements of this chapter and other applicable provisions and ordinances, the Building Official shall issue the permit. However, the applicants shall be solely responsible for conformance to requirements.

Any permit for construction of a sign shall become null and void unless construction of the sign and structure is completed within one hundred eighty (180) days of the issuance of a permit or the permit is renewed for an additional one hundred eighty (180) days and payment of one-half of original fee. (Ord. 885 (part), 2001: prior code § 7-20)
(Ord. No. 1094, 4-18-2016)

15.32.030 General provisions for signs.

Except as otherwise specifically provided in the City code, the following provisions apply for all signs:

A. Signs Shall Not Constitute Traffic Hazards. No sign or other advertising structure as regulated by this chapter shall be erected or continued to be displayed at the intersection of any street or within any alley or driveway in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape or color, such sign may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device.

   1. On-premises entrance, exit, monument and directional signs constructed and maintained in accordance with an approved sign plan shall be allowed on all parcels developed for commercial use. Such signs shall not exceed six (6) square feet in sign area, nor exceed the height restrictions for a structure located within the building setback if located therein.

2. Any signs, signals or devices erected by governmental entities, public schools and utility companies are exempt from the provisions of this chapter and shall be controlled by other applicable laws, regulations and ordinances.

B. Placing Signs on Public Property. No signs other than signs placed by agencies of government shall be erected on or above any public property; provided, that directional signs may be erected upon City street name supports, or upon traffic signposts under the following conditions:

1. The sign directs the reader to the location of a public facility attended principally by out-of-town patrons, to a facility relating to the public health, safety or welfare or to scenic or historic trails.

2. The signs are installed at locations where they would not constitute a traffic hazard.

3. The signs conform to the manual on uniform traffic control devices. Nothing contained in this section shall supersede, modify or nullify any of the provisions of contracts and agreements heretofore entered into by the City with the Highway and Transportation Department of the State of New Mexico and the U.S. Bureau of Public Roads concerning such property signs, banners, billboards and awnings.

C. Placing Signs on Private Property. No signs shall be placed on any private property without a permit and shall meet the following:

1. Each commercially developed site may have no more than one free-standing sign; provided, however, that sites with more than three hundred (300) feet of public street frontage may have one additional free-standing sign for each three hundred (300) feet of additional frontage or a fraction thereof.

2. No free-standing sign shall exceed thirty-five (35) feet in height and shall not exceed one hundred forty-four (144) square feet per sign. Wall signs shall not exceed one hundred forty-four (144) square feet per leased space facade.

3. The main multi-business sign on malls, shopping centers, strip malls, or similar uses shall not exceed more than one hundred forty-four (144) square feet and the total of tenant signs shall not exceed one hundred forty-four (144) square feet.

4. Signs erected on private properties fronting a minor residential roadway and within a residential area shall not exceed fifteen (15) feet in height or forty-eight (48) square feet per sign and be located wholly within the prescribed building setback. Wall signs shall not exceed forty-eight (48) square feet maximum.

D. Placing Billboards on Private Property. No billboards shall be placed on any private property containing a free standing sign. Billboards shall only be placed on private property fronting a Major Arterial as specified within the City of Hobbs Major Thoroughfare Plan and shall meet the following:

1. Each site shall have no more than one billboard; provided, however, that sites with more than eight hundred (800) feet of public street frontage may have one additional billboard providing an eight hundred (800) foot linear separation is maintained between all proposed or existing billboards adjacent to and oriented perpendicular to a Major Arterial, regardless of ownership.

2. A billboard shall not be permitted to be placed within eight hundred (800) linear feet of any existing billboard adjacent to and oriented perpendicular to a Major Arterial.

3. No billboard shall exceed thirty-five (35) feet in height or three hundred (300) square feet per billboard. All billboards shall be constructed of metal.

4. Billboards on residential streets are prohibited.

5. Billboards unable to secure an advertiser for a period of one hundred twenty (120) days shall be considered abandoned. The Building Official shall issue the property owner written notice of abandonment and said billboard shall be removed at the owner's expense within thirty (30) days.

E. Placing Signs on Trees, Rocks, Retaining Walls or Fences Located on Public Property. No signs shall be placed or painted on any tree, rock, retaining wall, fence or natural formation which is located on or above public property.

F. Placing Signs on Utility Poles. No sign shall be placed on any utility pole except for utility identification purposes and installed by utility agencies or in accordance with Section 15.32.070(C)(2).

G. Signs on Public Right-of-Way. With the exception of signs lawfully permitted or erected prior to the passage of the ordinance codified in this chapter, it is

unlawful to place a sign upon or above a public street, bridge, grounds, sidewalk, alley, right-of-way, curb or other public improvement, or on any public building or structure of any kind belonging to the City, or in any public place or public improvement except as stated on subsection H of this section or a written consent by the City Commission. Any unlawful sign found within, upon or above such public property and easements shall be removed if so ordered by a court of competent jurisdiction as specified under Sections 15.32.090 through 15.32.110. The City is authorized to impound any signs found on any public property and transport or causes same to be transported to a location to be designated by the Building Official for storage. Records shall be maintained on where such signs were located, when they were so impounded, and the date on which they were so impounded and the City shall hold the same in a storage area for a period of not more than thirty (30) days. At the end of thirty (30) days, such signs will be disposed of as abandoned property. (Ord. 885 (part), 2001: prior code § 7-22)

(Ord. No. 1094, 4-18-2016)

15.32.040 Design and construction.

It shall be the responsibility of the Building Official to determine, prior to the issuance of any final approval, that any sign erected, constructed or structurally altered is of such construction and is so supported and erected as to be safe for the area in which it is placed. If the Building Official finds that any sign is being erected, constructed, supported or maintained in such a manner as to become dangerous to the public or the surrounding area, then the Building Official shall give written notice to the sign applicant, owner or contractor erecting, constructing, altering or maintaining such sign, and upon such notice the notified party shall immediately act to either make such sign safe or remove same. (Ord. 885 (part), 2001: prior code § 7-23)

(Ord. No. 1094, 4-18-2016)

15.32.050 Requirement of plans.

The following are the City requirements for a sign permit.

A. Two (2) sets of plans and/or specifications shall be submitted with the application for each sign permit. One copy of the plans shall be returned to the applicant at the time the permit is granted. The plan shall indicate the size, height, material used, the method of attachment or support and location.

B. Plans for supporting any freestanding sign in excess of twenty-four (24) feet in height or having a sign face in excess of one hundred twenty-eight (128) square feet or billboard sign shall be accompanied by a structural computation and shall be certified by a New Mexico licensed architect or engineer. Sufficient data shall be submitted to show that supporting surfaces and other members of an existing building to which the sign is to be attached are in good condition and are adequately strong to support the sign loads. (Ord. 885 (part), 2001: prior code § 7-25)
(Ord. No. 1094, 4-18-2016)

15.32.060 Maintenance.

All signs and sign support structures, together with all of their supports, braces, guys and anchors, shall be kept in repair and in proper state of preservation. (Ord. 885 (part), 2001: prior code § 7-25)
(Ord. No. 1094, 4-18-2016)

15.32.070 Exempted Signs and Portable Signs.

The following signs shall not require a sign permit. These exemptions shall not be construed as relieving the sign permittee, owner of the sign and owner or lessee of the property upon which the sign and structure is located from the sole responsibility for its erection and maintenance, and its compliance with the provisions of this chapter or any other law or ordinance regulating same.

A. Painting, repainting, maintenance or cleaning of an advertising structure thereon shall not be considered an erection or alteration;

B. Temporary signs, including political, construction and real estate signs as defined;

C. Temporary banner signs may be used; provided, however, that such use satisfies all other parts of this chapter applicable thereto and the requirements of all other ordinances. Banner signs shall not be installed for more than sixty (60) days. The owner/contractor shall not install, support, or anchor the banner to any City or utility owned poles, prior to obtaining a written consent from the City Manager or his or her designated representative.

Portable signs shall be permitted by the Building Official. Portable signs are intended to be displayed for a short period of time only. Portable signs shall not be installed for more than a sixty (60) day period at any one location. A single location

is allowed to contain a single portable sign for a sixty (60) day period; thereafter the location shall not contain a portable sign for a thirty (30) day period. A portable sign shall be located a minimum of five (5) feet from the property line or fifteen (15) feet from the street curb or pavement edge or as directed by the Engineering Department to minimize visibility hindrances. All portable signs containing electrical wiring shall be subject to the provisions of the National Electrical Code and all other applicable codes and the electrical components used shall bear the label of an approved testing agency. Sign design, material and construction shall comply with the provision of this Code. All portable signs shall be stabilized and anchored to the ground to restrict displacement by the wind or other accidental force. If the portable sign is used for a period of sixty (60) days or more than, it must be permitted as a permanent sign for the location and meet all provisions of this Code as such. (Ord. 885 (part), 2001: prior code § 7-26)

(Ord. No. 1094, 4-18-2016)

15.32.080 Abandoned signs.

A sign is considered abandoned when the business, event or purpose the sign advertises no longer applies, no longer in business or when the face of the sign no longer contains advertising material and remains in such condition for a period of six (6) months and is constituting a hazard to life, safety and/or property. The Building Official shall issue a written notice to the sign or property owner, which notice shall state that such sign shall be removed or repaired within thirty (30) days. If the property owner fails to comply with such notice to the Building Official is authorized to cause removal of such sign as defined under Section 15.32.100. (Ord. 885 (part), 2001: prior code § 7-27)

(Ord. No. 1094, 4-18-2016)

15.32.090 Notice period.

The notice period for removal of temporary signs and portable signs is forty-eight (48) hours. The notice period for removal of abandoned signs is thirty (30) days. Property owners will receive a written notice stating that their property does not meet the standards set forth in this chapter. A second notice may result in the issuance of a citation. If the sign permittee or owner of the premises upon which the sign is located has not demonstrated to the satisfaction of the Building Official that the sign has been removed or brought into compliance with the provisions of this chapter by the end of the notice period, the Building Official shall certify the violation

to the City Attorney for proper action. (Ord. 885 (part), 2001: prior code § 7-28)
(Ord. No. 1094, 4-18-2016)

15.32.100 Removal of signs.

The Building Official is authorized to request removal of any illegal, nonconforming and abandoned sign as defined by this chapter.

Before requesting the removal of a sign, the Building Official shall give written notice to the sign owner or the owner of the premises on which such sign is located. The notice shall state the reasons and grounds for removal, specifying the deficiencies or defects in such sign with reasonable definiteness, and the violation charges. Such notice shall specify what repairs will make such an installation conform to the requirements of this chapter and specify that the sign must be removed or made to conform to the provisions of this chapter within the notice period provided herein. Service of notice may be made personally on the permittee and the property owner, or by certified mail addressed to the owner or permittee at the address specified in the permit or at such address as the owner or permittee may have given written notice or at the address shown on the property tax rolls. (Ord. 885 (part), 2001: prior code § 7-29)
(Ord. No. 1094, 4-18-2016)

15.32.110 Expense of removal.

If the owner, occupant or agent fails to remove or repair the nonconforming sign as required by this code and the City is forced to remove or repair such structures. All the actual cost and expense, including court costs and attorney fees, of any such removal or repairs incurred by the City shall be borne by the owner, occupant, agent of such sign and the owner of the premises on which the sign is located, shall be liable therefore, and an action for recovery thereof may be brought by the City Attorney upon proper certification thereof to him or her by the Building Official. The City shall have a lien against the property upon which such sign or structure is located which may be perfected and foreclosed in the same manner as other municipal liens. (Ord. 885 (part), 2001: prior code § 7-30)
(Ord. No. 1094, 4-18-2016)

15.32.120 Nonconforming signs.

A. Any existing sign or structure which violates or does not conform to the provisions of this chapter is considered nonconforming. Nonconforming signs and structures may continue in place as long as the following conditions are met:

1. No change in business name or use occurs;

2. The sign remains in good condition and does not constitute hazard to life and safety;

3. No major repair or alterations are made to the supporting structure of the sign.

B. Any nonconforming sign or sign structure that is in ruins, damaged and is danger to public safety and health shall be removed as stated in Section 8.24.010. (Ord. 885 (part), 2001: prior code § 7-31)
(Ord. No. 1094, 4-18-2016)

15.32.130 Sign illumination.

The light from any light source intended to illuminate a sign shall be shaded, shielded, dimmed and directed whereby the light intensity and brightness shall not adversely affect surrounding and facing premises, or adversely affect safe vision of pedestrians and operators of vehicles moving on public and private streets, driveways and parking areas. There should be no direct glare onto adjoining properties or in the eyes of motorists and pedestrians. Electronic signs shall display a static message for no less than eight (8) seconds for all signs except message boards which shall display for no less than two (2) seconds. Electronic signs shall not utilize animation; neither shall the transition from one message to another be animated. Electronic features of monument and portable signs are permissible providing said sign is located fully within the setbacks as prescribed in the City of Hobbs Major Thoroughfare Plan. (Ord. 885 (part), 2001: prior code § 7-32)
(Ord. No. 1094, 4-18-2016)

15.32.140 Reconstruction of sign.

When any existing sign is damaged, blown down or otherwise destroyed or taken down or removed for any purpose other than maintenance operation, such sign and structure, shall not be re-erected, reconstructed or rebuilt without first obtaining a permit and shall be in full conformance with this chapter and all other applicable codes. (Ord. 885 (part), 2001: prior code § 7-35)
(Ord. No. 1094, 4-18-2016)

15.32.150 Fees.

A sign permit fee shall be in accordance with section 15.28.050 as established by the City. (Ord. 885 (part), 2001: prior code § 7-37)
(Ord. No. 1094, 4-18-2016)

15.32.160 Variances and Waivers.

Following a duly conducted public hearing, the City of Hobbs Planning Board may grant a waiver(s) or a variance(s) to the requirements herein, providing that sufficient justification is presented to the Planning Board and a finding is made by the Planning Board that approving the waiver or variance to the requirements herein is not inconsistent with the purpose and intent of the chapter. (Ord. 885 (part), 2001: prior code § 7-43)
(Ord. No. 1094, 4-18-2016)

Chapter 15.36 FLOODPLAIN MANAGEMENT*

Article 1. Statutory Authorization, Findings of Fact, Purpose and Methods

15.36.010 Statutory authorization.

The Legislature of the State of New Mexico has in § 3-18-7 NMSA delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City of Hobbs, New Mexico, does ordain as follows:
(Ord. No. 1006, Art. 1(A), 12-15-2008)

15.36.020 Findings of fact.

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

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
(Ord. No. 1006, Art. 1(B), 12-15-2008)

***Editor's note—**Ord. No. 1006, Arts. 1—5, adopted December 15, 2008, amended Ch. 15.36, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 15.36 pertained to similar subject matter. See the Code Comparative Table and Disposition List for a detailed analysis of inclusion.

15.36.030 Statement of purpose.

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

(1) Protect human life and health;

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

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

(4) Minimize prolonged business interruptions;

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

(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Insure that potential buyers are notified that property is in a flood area.

(Ord. No. 1006, Art. 1(C), 12-15-2008)

15.36.040 Methods of reducing flood losses.

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

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

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

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 1006, Art. 1(D), 12-15-2008)

Article 2. Definitions

15.36.050 Definitions.

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

Alluvial fan flooding - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

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

Appurtenant structure - means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

Area of future conditions flood hazard - means the land area that would be inundated by the one(1) percent annual chance (one hundred-year) flood based on future conditions hydrology.

Area of shallow flooding - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard - is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1—30, AE, A99, AR, AR/A1—30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1—30, VE or V.

Base flood - means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) - The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1—A30, AR, V1—V30, or VE that indicates the water surface elevation resulting from the flood that has a one (1) percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

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

Breakaway wall - means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

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

Elevated building - means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

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

Expansion to an existing manufactured home park or subdivision - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

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

Flood Insurance Study (FIS) - see "Flood Elevation Study."

Floodplain or flood-prone area - means any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway - see "Regulatory Floodway."

Functionally dependent use - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term

includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

Historic structure - means any structure that is:

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

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

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

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

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

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

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

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

Lowest floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not

considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home - means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision - means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level - means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

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

Recreational vehicle - means a vehicle which is (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area - see "Area of Special Flood Hazard."

Start of construction - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure - means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum

necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance - means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

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

Water surface elevation - means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas
(Ord. No. 1006, Art. 2, 12-15-2008)

Article 3. General Provisions

15.36.060 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard with the jurisdiction of Hobbs.
(Ord. No. 1006, Art. 3(A), 12-15-2008)

15.36.070 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Lea County New Mexico and Incorporated Areas," dated December 16, 2008, with accompanying Flood Insurance Rate Maps (FIRM) dated December 16, 2008
(Ord. No. 1006, Art. 3(B), 12-15-2008)

15.36.080 Establishment of development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this chapter.
(Ord. No. 1006, Art. 3(C), 12-15-2008)

15.36.090 Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.
(Ord. No. 1006, Art. 3(D), 12-15-2008)

15.36.100 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. No. 1006, Art. 3(E), 12-15-2008)

15.36.110 Interpretation.

In the interpretation and application of this chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.
(Ord. No. 1006, Art. 3(F), 12-15-2008)

15.36.120 Warning and disclaimer or liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
(Ord. No. 1006, Art. 3(G), 12-15-2008)

Article 4. Administration

15.36.130 Designation of the Floodplain Administrator.

The City Manager or his or her designated representative, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this

chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.
(Ord. No. 1006, Art. 4(A), 12-15-2008)

15.36.140 Duties and responsibilities of the Floodplain Administrator.

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

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter.

(2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by adoption of this chapter.

(4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

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

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Department of Homeland Security & Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Section 15.36.080, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

(9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1—30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1—30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one (1) foot, provided that the community first completes all of the provisions required by Section 65.12.

(Ord. No. 1006, Art. 4(B), 12-15-2008)

15.36.150 Permit procedures.

(1) Application for a floodplain development permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

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

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 15.36.180(B)(2);

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

(e) Maintain a record of all such information in accordance with Section 15.36.140(B)(1);

(2) Approval or denial of a floodplain development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

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

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

(d) The compatibility of the proposed use with existing and anticipated development;

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

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

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

(h) The necessity to the facility of a waterfront location, where applicable;

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

(Ord. No. 1006, Art. 4(C), 12-15-2008)

15.36.160 Variance procedures.

(1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this chapter.

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

(3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

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

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 15.36.190(2) of this Article have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (Section 15.36.030).

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

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

(10) Prerequisites for granting variances:

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

(b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

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

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Section 15.36.160(1)—(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
(Ord. No. 1006, Art. 4(D), 12-15-2008)

Article 5. Provisions for Flood Hazard Reduction

15.36.170 General standards.

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

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

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

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

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

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

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

(Ord. No. 1006, Art. 5(A), 12-15-2008)

15.36.180 Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 15.36.070, (ii) Section 15.36.140(8), or (iii) Section 15.36.190(3), the following provisions are required:

(1) *Residential Construction* - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 15.36.150(1)a., is satisfied.

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

(3) *Enclosures* - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of

floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two (2) openings on separate walls having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than one (1) foot above grade.

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

(4) *Manufactured Homes* -

(a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1—30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1—30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

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

(5) *Recreational Vehicles* - Require that recreational vehicles placed on sites within Zones A1—30, AH, and AE on the community's FIRM either (i) be on the site for fewer than one hundred eighty (180) consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 15.36.150(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Ord. No. 1006, Art. 5(B), 12-15-2008)

15.36.190 Standards for subdivision proposals.

(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 15.36.020, 15.36.030, and 15.36.040 of this chapter.

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Section 15.36.080; Section 15.36.150; and the provisions of Article 5 of this chapter.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Section 15.36.070 or Section 15.36.180(8) of this chapter.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

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

(Ord. No. 1006, Art. 5(C), 12-15-2008)

15.36.200 Standards for areas of shallow flooding (AO/AH Zones).

Located within the areas of special flood hazard established in Section 15.36.070 are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).

(2) All new construction and substantial improvements of non-residential structures;

(a) Have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified), or

(b) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(c) Shall provide a drainage site plan submitted by a registered professional engineer which will reduce the amount of peak flow storm water runoff. In areas where curb and gutter does not exist on the fronting and side road, curb and gutter shall be installed with the new construction

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in Section 15.36.150 are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(Ord. No. 1006, Art. 5(D), 12-15-2008)

15.36.210 Floodways.

Floodways - located within areas of special flood hazard established in Section 15.36.070, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If 15.36.210(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulation, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

(Ord. No. 1006, Art. 5(E), 12-15-2008)

15.36.220 Severability.

If any section, clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this chapter.

(Ord. No. 1006, Art. 5(F), 12-15-2008)

15.36.230 Penalties for non compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the Floodplain Management Ordinance. Violation of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter shall upon conviction thereof be fined not more than five hundred dollars ($500.00) or imprisoned for not more than ninety (90) days, or both, for each violation, and in addition

shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
(Ord. No. 1006, Art. 5(G), 12-15-2008)

Chapter 15.40 LANDSCAPING*

15.40.010 Purpose and intent.

The City of Hobbs ("City") wishes to promote and preserve visually attractive and pleasing surroundings, reduce erosion and runoff, and improve the quality of the environment including major thoroughfares, City rights-of-way and commercial frontage. The City desires to have development with an attractive and high quality appearance. Finally, the City desires to maintain consistent landscaping guidelines for newly constructed private and public commercial properties. Therefore, landscaping shall be provided and maintained as set forth in this chapter. The style of landscape is not described; however, indigenous or drought tolerant plants are recommended but not required. (Ord. 950 (part), 2006)

15.40.020 Definitions.

As used in this chapter the following terms are defined as follows:

"Landscape plan" means a scaled landscape plan indicating the type and location of irrigation system and location of landscaping or improvements as defined in the landscaping definition.

"Landscaping" means to improve the aesthetic appearance of private property and/or public right-of-way with a combination of at least two (2) of the following: turf, ornamental shrubs, trees, ornamental landscape rock, bark, creative concrete designs, and brick pavers, but at least one (1) of the materials shall be living. (All living materials used shall be of such size and quality as to enhance the landscaped area, i.e., two- to three-inch tree trunk diameter and five-gallon ornamental shrubs.) Landscaping required by this chapter shall be determined as follows:

1. From the total square footage of the site there shall be deducted the total square footage of the building pad, fenced-in retail and/or storage areas, permanent canopies, and other improvements reasonably considered to be

***Note—**Prior ordinance history: Ord. 914.

part of the building and cover area for the primary activities carried on at the commercial site. This resulting number shall be described as the "parking lot."

2. An amount of land equal to ten (10) percent of the parking lot is the amount of land required to be landscaped, except for automobile, trailer, and mobile home sales lots, for which the required percentage of land is only five (5) percent. Landscaping can be placed on private property or, with the approval of the City Manager or his or her designee, can be placed in the public right-of-way, or both.

3. At least seventy-five (75) percent of the total area required to be landscaped shall be located within the front perimeters of the site adjacent to an adjacent street or to adjacent streets for corner sites. The required landscaping need not be continuous along the entire front perimeters but can be situated in noncontiguous locations allowing driveways, signs, and other uses of portions of the front perimeters.

4. For new parking lots with more than one hundred (100) spaces, it is strongly recommended but not required that trees be planted every twenty (20) spaces to allow for shade and visual relief.

5. Landscaping must not obstruct visibility for traffic flow or traffic devices.

"New construction" means all nonresidential buildings which are built, erected or otherwise placed upon a commercial site after the effective date of the ordinance codified in this chapter and shall include modular and manufactured buildings and trailers placed upon a commercial site. Remodels and additions to existing commercial buildings are not considered new construction.

"Site" is defined as the lot or lots included within the application for which the new construction building permit is sought and upon which the landscape requirements of this chapter are imposed as minimum acceptable standards.

"Variances" shall be requested in writing to the City Manager and approved by the City Commission. (Ord. 950 (part), 2006)

15.40.030 Irrigation systems and watering.

All landscaped areas on the site shall have immediate availability of water via an automated underground irrigation system meeting industry standards. (Ord. 950 (part), 2006)

15.40.040 Landscape plan review.

A landscape plan shall be submitted in conjunction with the construction plans to the Building Inspector. The plan shall be a scaled, detailed drawing comprehensive in nature, detailing the specific locations of irrigation and plant material. All other materials used shall be identified by type and location of placement and usage. The Building Inspector shall grant approval or require revision of the landscape plan within thirty (30) days from the date of submission of the landscape plan. (Ord. 950 (part), 2006)

15.40.050 Maintenance.

The owner of the landscaped property shall be responsible to maintain, trim, and prune the landscaping on that owner's property as well as the landscaping that owner places in the public right-of-way. Dead plant material shall be replaced with new material in as brief a time as practicable as dictated by seasonal conditions. The Parks Division may be consulted as a resource for appropriate materials. Landscaped areas, as well as the remainder of the entire property, shall be kept weed and litter free. All plant growth shall be trimmed to allow for maintenance of public utilities and unobstructed vision of traffic and traffic devices. (Ord. 950 (part), 2006)

15.40.060 Enforcement—Penalties.

The owner shall have sixty (60) days from date of issuance of final certificate of occupancy to complete landscaping. A fine of not more than two hundred dollars ($200.00) per day may be imposed for violations of this chapter. (Ord. 950 (part), 2006)

15.40.070 Variances—Extensions.

The owner may submit to the City Manager a written request for a variance. A variance for good cause shown may be granted in writing by the City Commission, in which event a certificate of variance shall be issued and filed with the Building Inspector as a permanent record. A variance shall be automatically revoked in the event a building permit for the project containing the approved variance has not been obtained within one (1) year or construction has not been completed within one (1) year after the building permit has been issued. The City Manager or his or her designee may grant an extension not to exceed one (1) year in duration as deemed appropriate, upon written application made prior to expiration of the specified period. (Ord. 950 (part), 2006)

Title 16

SUBDIVISIONS

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16.16.040 Blocks.
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Chapter 16.04 GENERAL PROVISIONS AND ADMINISTRATION

16.04.010 Definitions.

For the purposes of this title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. Streets and Alleys. The term "street" means a way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, place or otherwise.

1. "Arterial streets and highways" are those which are used primarily for large volumes of traffic. For development purposes, arterial streets are generally located along section lines.

2. "Collector streets" are those which carry moderately high volumes of traffic and, for development purposes, are generally located along half section lines.

3. "Residential collector streets" are those which carry moderate volumes of traffic between local streets and collectors or arterials. For development purposes, these streets are generally located halfway between collector or arterial streets.

4. "Local streets" are those which are used primarily for access to abutting properties. This category carries low traffic volumes and includes residential or industrial streets.

5. "Marginal access streets" are minor streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.

6. "Cul-de-sac" is a local street with only one (1) outlet and having an appropriate vehicle turnaround terminal for the safe and convenient reversal of traffic flows.

7. "Alleys" are minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street

8. Pavement widths shall be measured back to back of curbs, where curbs are required.

B. "Subdivide" or "subdivision" for the purpose of approval by a Municipal Planning Authority means:

1. For the area of land within the corporate boundaries of the municipality, the division of land into two (2) or more parts by platting or by metes and bounds description into tracts for the purposes set forth in subsection C of this section; and

2. For the area of land within the municipal extraterritorial subdivision and platting jurisdiction, the division of land into two (2) or more parts by platting or by metes and bounds description into tracts of less than five (5) acres in any one (1) calendar year for the purposes set forth in subsection C of this section.

C. The division of land pursuant to subsection (B)(1) or (2) of this section shall be for the purpose of:

1. Sale;

2. Laying out a municipality or any part thereof;

3. Adding to a municipality;

4. Laying out of lots; or

5. Resubdivision. (Ord. 842 § 2, 1998: prior code § 25-1)

16.04.020 Variances and modifications.

A. Hardships. Where the Planning Board finds that extraordinary hardships may result from strict compliance with this title, it may vary the regulations contained in this title, so that substantial justice may be done and the public interest secured; provided, that such variation will not have the effect of nullifying the intent and purpose of such regulations.

B. Large Scale Developments. The standards and requirements of this title may be modified by the Planning Board in the case of a plan and program for a new town, complete community or neighborhood unit which, in the judgment of the Planning Board, provide adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity to and achievement of the plan.

C. Conditions in Granting. In granting variances and modifications, the Planning Board may require such conditions as will, in its judgment, assure substantially the

objectives of the standards or requirements so varied or modified. (Prior code § 25-2)

Chapter 16.08 PLATS AND PLATTING PROCEDURE

16.08.010 Application fee.

Upon the filing of any plat application as set forth in this chapter, the applicant shall pay to the City an application fee in the sum of twenty-five dollars ($25.00), plus twenty-five cents ($0.25) an acre for each acre of the proposed subdivision. No action shall be taken on such application unless such fee is paid. (Prior code § 25-3)

16.08.020 Preliminary plat—Generally.

A. The subdivider shall submit to the Planning Board a preliminary plat, together with improvement plans and other supplementary material as specified in Section 16.08.030.

B. Four (4) copies of the preliminary plat and supplementary material shall be submitted to the Planning Board with a written application for conditional approval. At the time the preliminary application is filed, the preliminary application fee shall be paid. The Planning Board shall thereupon refer the application to the City Engineer for his or her consideration.

C. Following review of the preliminary plat and other material submitted, for conformity thereof to this title, and negotiations with the subdivider on changes deemed advisable and the kind and extent of improvements to be made by him or her, the City Engineer shall, within fifteen (15) days, act thereon as submitted or modified. If approved, the City Engineer shall express his approval as conditional approval and state the conditions of such approval, if any, or if disapproved, shall express his disapproval and his or her reasons therefor, to the Planning Board.

D. The action of the City Engineer shall be noted on two (2) copies of the preliminary plat, referenced and attached to any conditions determined. One (1) copy shall be returned to the subdivider and the other retained by the City Engineer.

E. Conditional approval of a preliminary plat shall not constitute approval of the final plat (subdivision plat). Rather, it shall be deemed an expression of approval to the layout submitted on the preliminary plat as a guide to the preparation of the final plat. (Prior code § 25-4)

16.08.030 Preliminary plat—Form and contents—Supplementary material.

The preliminary plat and accompanying supplementary material shall meet the following requirements:

A. General Subdivision Information. General subdivision information shall describe or outline the existing conditions of the site and the proposed development, as necessary to supplement the drawings required in this section. This information shall include data on existing covenants, land characteristics and available community facilities and utilities and information describing the subdivision proposal, such as number of residential lots, typical lot width and depth, business area, playgrounds, park areas and other public areas, proposed protective covenants and proposed utilities and street improvements.

B. Location Map. A location map shall show the relationship of the proposed subdivision to existing community facilities which serve or influence such subdivision. Such map shall include development name and location; main traffic arteries; public transportation lines; shopping centers, elementary and high schools, parks and playgrounds and other community features, such as railroad stations, hospitals and churches; title scale; north arrow; and date. Proper certification shall be made upon the plat by a reputable, registered civil engineer or land surveyor, ascertaining that the plan represents a survey made by him and that all necessary monuments are accurately and correctly shown upon the plan. The engineer shall place such monuments as required by the City or by the City Engineer, and they shall be set at all corners and angle points of curve and at such intermediate points as shall be required by the City.

C. Topographic Data. Topographic data required as a basis for the preliminary plat, pursuant to subsection D of this section, shall include existing conditions as follows, except when otherwise specified by the Planning Board:

1. Boundary lines: bearings and distances;
2. Easements: location, width and purpose;
3. Streets on and adjacent to the tract: names and rights-of-way, width and location; type, width and elevation of surfacing; any legally established centerline elevations; walks, curbs, gutters, culverts, etc.
4. Utilities on and adjacent to the tract: location, size and invert elevation of sanitary, storm and combined sewers; location and size of water mains;

location of gas lines, fire hydrants, electric and telephone poles and street lights; if water mains and sewers are not on or adjacent to the tract, indicate the direction and distance to and size of nearest ones, showing invert elevation of sewers;

5. Ground elevations on the tract, based on a datum plane approved by the City Engineer, along all drainage channels or swales and at selected points not more than one hundred (100) feet apart in all directions; show contours with an interval of not more than one (1) foot if ground slope is regular and such information is sufficient for planning purposes;

6. Subsurface conditions on the tract, if required by the Planning Board: location results of tests made to ascertain subsurface soil, rock and ground water, unless test pits are dry at a depth of five (5) feet; location and results of soil percolation tests if individual sewage disposal systems are proposed.

7. Other conditions on the tract: watercourses, marshes, rock outcrop, wooded areas, isolated preservable trees, houses, barns, shacks and other significant features;

8. Other conditions on adjacent land: approximate direction and gradient of ground slope, including any embankments or retaining wall; character and location of buildings, railroads, power lines, towers and other nearby land uses or adverse influences; owners of adjacent unplatted land; for adjacent platted land, refer to subdivision plat by name, recordation date and number and show approximate percent built up, typical lot size and dwelling type;

9. Photographs, if required by the Planning Board; camera locations, directions of views and key numbers;

10. Zoning on and adjacent to the tract;

11. When known, proposed public improvements: highways or other major improvements planned by public authorities for future construction on or near the tract;

12. Key plan, showing location of the tract;

13. Title and certificates: present tract designation according to official records in office of appropriate records; title under which proposed

subdivision is to be recorded, with names and addresses of owners, notation stating acreage, scale, north arrow, datum, benchmarks, certification of registered civil engineer or surveyor and date of survey.

D. Scale—Proposals. The preliminary plat (general subdivision plan) shall be at a scale of one hundred (100) feet to one (1) inch or larger. It shall show all existing conditions required in subsection C of this section and shall show all proposals, Including the following:

1. Streets: names; right-of-way and roadway widths; approximate grades and gradients; similar data for alleys, if any;
2. Other rights-of-way or easements: location, widths and purpose;
3. Location of utilities, if not shown on other exhibits;
4. Lot lines, lot numbers and block numbers;
5. Sites to be reserved or dedicated for parks, playgrounds or other public uses;
6. Sites, if any, for multifamily dwellings, shopping centers, churches, industry or other nonpublic uses, exclusive of single-family dwelling;
7. Minimum building setback lines;
8. Site data, including number of residential lots, typical lot size and acres in parks, etc.;
9. Title, scale, north arrow and date.

E. Other Preliminary Plans. When required by the City Engineer, the preliminary plat shall be accompanied by profiles showing existing ground surface and proposed street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision; typical cross section of the proposed subdivision; typical cross section of the proposed grading, roadway and sidewalks; and preliminary plan for proposed sanitary and storm sewers, with grades and sizes indicated. All elevations shall be based on a datum plane approved by the City Engineer.

F. Draft of Protective Covenants. A draft of protective covenants, whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development, shall be included. (Prior code § 25-5)

16.08.040 Final Plat—Generally.

A. The final plat shall conform substantially to the preliminary plat as approved, and if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he or she proposes to record and develop at the time; provided, that such portions conform to all requirements of this title.

B. Application for approval of the final plat shall be submitted in writing to the City Engineer at least ten (10) days prior to the meeting at which it is to be considered. At the time the final subdivision plat is filed, the required fee shall be paid.

C. Four (4) copies of the final plat and other exhibits required for approval shall be prepared as specified in Section 16.08.050 and shall be submitted to the City Engineer within six (6) months after approval of the preliminary plat; otherwise, such approval shall become null and void, unless an extension of time is applied for and granted by the Planning Board.

D. The Planning Board shall approve or disapprove the final plat within thirty-five (35) days after final submission thereof and thereafter forward to the City Commission the report of their approval or disapproval.

E. The City Commission shall, at their next regular meeting and within thirty (30) days, approve or disapprove the final plat. (Prior code § 25-6)

16.08.050 Final plat—Form and contents—Supplementary material.

The final plat and accompanying supplementary material shall meet the following requirements:

A. Generally. The final plat shall be drawn in ink on tracing cloth on sheets eighteen (18) inches wide by twenty-four (24) inches long or twenty-six (26) inches wide by thirty-four (34) inches long and shall be at a scale of one hundred (100) feet to one (1) inch, or larger where necessary; the plat may be on several sheets, accompanied by an index sheet showing the entire subdivision. For larger subdivisions, the final plat may be submitted for approval progressively in continuous sections, satisfactory to the Planning Board. The final plat shall show the following:

1. Primary control points, approved by the City Engineer, or description and ties to such control points, to which all dimensions, angles, bearings and similar data on the plat shall be referred;

2. Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles and radii, arcs and central angles of all curves;
3. Name and right-of-way width of each street or other right-of-way;
4. Location, dimensions and purpose of any easements;
5. Number to identify each lot or site;
6. Purpose for which sites, other than residential lots, are dedicated or reserved;
7. Location and description of monuments;
8. Names of record owners of adjoining unplatted land;
9. Reference to recorded subdivision plats of adjoining platted land by record name, date and number;
10. Certification by surveyor or engineer, certifying to accuracy of surveys and plat;
11. Certification title, showing that applicant is the land owner.
12. Statement by owner dedicating streets, rights-of-way and any sites for public use;
13. Tile, scale, north arrow and date;
14. Certificates for approval by the City Engineer and by the Planning Board;
15. Certificates for approval by the City Commission.

B. Cross Sections and Profiles of Streets. Cross sections and profiles of streets shall be included, showing grades approved by the City Engineer. The profiles shall be drawn by City standard scales and elevations and shall be based on a datum plane approved by the City Engineer.

C. Certificate Concerning Improvements. A certificate by the City Engineer shall be included, certifying that the subdivider has complied with one (1) of the following alternatives:

1. All improvements have been installed in accordance with the requirements of this title and with the action of the City Engineer giving conditional approval of the preliminary plat.

2. A surety company bond or other security acceptable to the Planning Board has been filed with the City Clerk, in sufficient amount to assure such completion of all required improvements.
3. Other Data. Such other certificates, affidavits, endorsements or deductions shall be included as may be required by the Planning Board in the enforcement of this title. (Prior code § 25-7)

Chapter 16.12 ALTERNATE SUMMARY PROCEDURE

16.12.010 Eligible subdivisions.

A. Division of land into two (2) or more parcels by platting or metes and bounds description for specific purposes listed in Section 16.04.010(C) requires subdivision approval by the Municipal Planning Authority. To expedite the process for two (2) or three (3) lot subdivisions, subdivisions or resubdivision of property may be approved by summary procedure for the following:

1. Subdivisions of not more than three (3) parcels of land; or
2. Resubdivisions, where the combination or recombination of portions of previously platted lots does not increase the total number of lots.

B. The land shall abut on a street or streets of adequate width in a partially platted area and is so situated that no additional streets, alleys, easements for utilities or other public property are required; or if required to conform to other public streets, alleys or other public ways and such additional property is shown on the plat as "Herein Dedicated." (Ord. 843 (part), 1998: prior code § 25-15)

16.12.020 Submittal requirements.

To be considered, four (4) copies of a summary plat meeting the following conditions shall be submitted to the City Manager's designated representative:

The summary plat for both residential and nonresidential developments shall be in conformance with the Step I and Step III plat requirements for standard subdivisions. A certification of approval shall be on the plat for the signature of the City Manager's designated representative, to be attested by the City Clerk.

A. For residential subdivisions, the summary plat shall be accompanied by support plans and documentation showing compliance with Step III construction improvement requirements for a standard subdivision, as necessary.

B. For a nonresidential subdivision being processed under this procedure, the plat shall include the following items necessary for the City Manager's designated representative to review and approve the following items of consideration: proposed property boundaries, existing adjacent streets or alleys, and existing intersection and driveway locations on streets or roadways adjacent to and across from the tracts. This information will be reviewed along with existing water and sewer locations to serve the site.

(Ord. 843 (part), 1998: prior code § 25-16)

16.12.030 Approval procedure.

A. The City Manager's designated representative is authorized to approve subdivisions meeting the conditions of this section and conforming to the provisions of this chapter and shall, within ten (10) days of final submittal of all requested information, accept the proposed subdivision or send a written rejection detailing the reason for the rejection. Any required construction for residential subdivisions, shall be completed or adequate surety provided prior to receiving final approval.

B. The subdivider or the City Manager's designated representative may choose to have the subdivision reviewed by the Planning Board under the standard procedures if difficulties or unusual circumstances exist.

C. Plats approved under this section shall be signed by the City Manager's designated representative and attested by the City Clerk and shall be reported to the Planning Board at its next regularly scheduled meeting and shall be included in the minutes of the meeting indicating such approval as coming under this section.

(Ord. 843 (part), 1998: prior code § 25-17)

16.12.040 [Required improvements; summary process approval; city building permits, etc.]

A. For all new subdivisions and re-subdivisions, all improvements will be required to be completed at the summary process approval or at the final plat filing, unless adequate financial security has been approved by the Planning Board and City Commission.

B. For all City building permits, the permit application must contain plans for the complete construction of all of the required improvements within the abutting right-of-way to the property, including City utilities, paved streets, sidewalks, curbing, and traffic signals if applicable. The City will furnish required street signs and

street lights, if needed. For properties with two (2) or more un-built platted streets abutting the property, the Developer shall build to the length of the longest frontage.

C. For all City building permits for new residential structures and mobile home placement permits, the lot, tract, parcel or real property containing the location of the new structure shall abut a dedicated public right-of-way with a paved street pursuant to minimum standards as specified by the City Engineer. If the permit location does not abut a paved dedicated street or is both unpaved and not dedicated, the permit applicant must cause the street to be dedicated and paved prior to the building permit being issued, unless adequate financial security has been approved by the Planning Board and City Commission. The City will post notice signs to inform the public of this policy on affected streets.

D. If the permit location's nearest property line is two hundred (200) feet or more from the nearest paving, it shall be exempt from the paving requirement, but in no case shall a permit be granted unless a public dedicated right-of-way exists for access.

(Ord. No. 1012, §§ 1, 2, 5-4-2009; Ord. No. 1027, 12-7-2009)

Editor's note—Ord. No. 1012, § 1, adopted May 4, 2009, repealed former § 16.12.040, which pertained to construction of nonresidential lot improvements. Section 2 of said ordinance enacted provisions designated as a new § 16.12.040 to read as herein set out. See also the Code Comparative Table and Disposition List.

Chapter 16.16 DESIGN STANDARDS AND IMPROVEMENTS

16.16.010 Streets.

A. Arrangement and Character Generally. The arrangement, character, extent, width, grade and location of all streets shall conform to the current official City map, master plan or part thereof, and shall be considered in their relation to existing and planned streets, to topographical conditions and to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.

B. Arrangement Where Same not Shown in City Map or Master Plan. Where such is not shown in the current official City map, master plan or part thereof, the arrangement of streets in a subdivision shall either:

1. Provide for the continuation of appropriate projection of existing principal streets in surrounding areas; or

2. Conform to a plan for the neighborhood approved or adopted by the Planning Board to meet a particular situation, where topographical or other conditions make continuance or conformance to existing streets impracticable.

C. Minor Streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.

D. Special Treatment for Subdivisions Containing Arterial Streets. Where a subdivision abuts or contains an existing or proposed arterial street, the Planning Board may require marginal access streets, reverse frontage with screen planting or walls contained in a nonaccess reservation along the rear property line, deep lots with rear service alleys or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

E. Subdivisions Bordering on or Containing Railroad or Limited Access Highway Rights-of-Way. Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts or for commercial or industrial purposes in appropriate districts. Such distance shall be determined with due regard for the requirements of approach grades and future grade separations.

F. Reserve Strips. Reserve strips controlling access to streets shall be prohibited, except where their control is definitely placed in the City under conditions approved by the Planning Board.

G. Street Jogs. Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be avoided.

H. Tangents. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

I. Curves Connecting Street Lines. When connecting street lines deflect from each other at any one (1) point by more than ten (10) degrees, they shall be connected by a curve, with a radius adequate to insure a sight distance of not less than two hundred (200) feet for minor and collector streets and of such greater radius as the Planning Board shall determine for special cases.

J. Angle of Intersection. Streets shall be laid out as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than sixty (60) degrees.

K. Right-of-Way Widths. Street right-of-way widths shall be as shown in the master plan and, where not shown therein, shall not be less than as follows:

Arterial streets	80 feet
Collection, minor and marginal streets	60 feet

L. Half Streets. Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of this title. Where the Planning Board finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided wherever a half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

M. Dead-End Streets. Dead-end streets, designed to be so permanently, shall not be longer than five hundred (500) feet and shall be provided at the closed end with a turnaround having an outside roadway diameter of at least eighty (80) feet and a street property line diameter of at least one hundred (100) feet.

N. Street Grades. No street grade shall be less than 0.1 percent. (Prior code § 25-8)

16.16.020 Alleys.

A. Required—Exceptions. Alleys shall be provided in all areas; except, that the Planning Board may waive this requirement in commercial areas where other definite and assured provision is made for service access, such as off-street loading, unloading and parking consistent with an adequate provision for the uses proposed.

B. Width. The width of an alley shall not be less than twenty (20) feet.

C. Alley Intersections. Alley intersections and sharp changes in alignment shall be avoided, but where necessary, the corner shall be cut off sufficiently to permit safe vehicular movement.

D. Dead-End Alleys shall be avoided where possible but, if unavoidable, shall be provided with adequate turning around facilities at the dead end, as determined by the Planning Board.

E. If secondary access to the rear of residential lots is desired by a Developer, the secondary access to the lots must be created by a dedicated public street or a dedicated public alley. A private drive is not acceptable to serve as a rear alley to

provide secondary access to residential lots unless a homeowner or similar association or organization has been created to permanently own and maintain the private alley. Such an association must be legally created prior to approval of the final plat containing any private alleys in residential subdivisions. (Prior code § 25-9)
(Ord. No. 1012, § 3, 5-4-2009)

16.16.030 Easements.

A. Generally. Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be at least ten (10) feet wide.

B. Stormwater Easements or Drainage Rights-of-Way. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the alignment of such watercourse, or such construction as will be adequate for the purposes, and as approved by the Planning Board. (Prior code § 25-10)

16.16.040 Blocks.

A. The lengths, widths and shapes of blocks shall be determined with regard to:

1. Provision of adequate building sites suitable to the special needs of the type of use contemplated;
2. Zoning requirements as to lot sizes and dimensions;
3. Needs for convenient access, circulation, control and safety of street traffic;
4. Limitations and opportunities of topography.

B. Block lengths shall not exceed eight hundred eighty (880) feet, measured along the property lines. (Prior code § 25-11)

16.16.050 Lots.

A. Appropriateness for Location and Type of Development and Use. The lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

B. Dimensions Generally.

1. Minimum lot width for each lot containing a detached structure shall be thirty-five (35) feet.

2. Minimum lot width for each lot containing an attached structure shall be twenty five (25) feet. For attached structures, lot width dimensions less than twenty-five (25) feet may also be approved by the City, pending review and approval of adequate parking, site design and other relevant factors by the Planning Board and City Commission. Minimum side yard setback on corner lots shall be ten (10) feet on the side of the lot contiguous to the side street.

C. Commercial and Industrial Property. Depth and width of property reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

D. Corner Lots for Residential Use. Corner lots for residential use shall have extra width to permit appropriate building setback from and orientation to both streets.

(E) Access to Existing Public Streets. The subdividing of the land shall be such as to provide, by means of a public street, and each lot shall be provided with a thirty-five (35) feet minimum access to an existing public street. Minimum access width for each lot fronting a cul-de-sac shall be thirty (30) feet minimum measured on the property line to the curb line, and a thirty-five (35) feet minimum width measured at the building setback line. Each "Flag" lot, defined herein as a parcel of land accessible only by an extension of land connecting a public access street to the building site area of the parcel, shall have a minimum continuous access width of thirty-five (35) feet. Access shall mean a contiguous and continuous direct property boundary connecting to the public street.

F. Double and Reverse Frontage Lots. Double frontage and reverse frontage lots shall be avoided, except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there shall be no right of access, shall be provided along the line of lots abutting such traffic artery or other disadvantageous use.

G. Intersections of Side Lot and Street Right-of-Way Lines. Side lot lines at the intersection with street right-of-way lines shall be substantially at right angles or radial to street lines. (Prior code § 25-12)
(Ord. No. 1041, §§ 1—3, 3-7-2011)

16.16.060 Street or sidewalk improvements defined.

"Street or sidewalk improvements" include any installation of curbs, pavement, sidewalks, drainage, utilities, signs, lights and any other such improvements which

meet the approval of the Planning Board and conform to standards and specifications prescribed by the City Commissions. (Prior code § 25-13)

16.16.070 Required improvements.

The following improvements shall be required pursuant to this chapter:

A. Monuments. Monuments of a type and design as approved by the Planning Board shall be placed at all block corners, angle points, points of curves in streets, street intersections and points as shall be required by the Planning Board. Such monuments may be of iron pipe not less than three-quarters (3/4) of an inch in diameter and two (2) feet in length, driven securely into solid earth, with the grades of same being at grade with established paving, flush with natural grade of the earth's surface or on existing paving. A four-inch bolt and washer may be used.

B. Street Improvements. Street improvements shall include substantial permanent street signs at each intersection, such signs to be of a material and design as prescribed by the City Commission.

C. Design Details and Construction Standards. Design details and construction standards for utility and street improvements shall conform to standard details and specifications adopted by the City Engineer and approved by the City Commission. (Prior code § 25-14)

Title 17

ZONING
(Reserved)

Title 18

PLANNING AND DEVELOPMENT

Chapter 18.04 Manufactured Homes

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Chapter 18.04 MANUFACTURED HOMES*

18.04.010 General provisions.

A. The purpose of this chapter is to guide the orderly growth and development of Hobbs in accordance with the City of Hobbs Comprehensive Plan in order to protect health, safety and general welfare of current and future inhabitants of the City of Hobbs, New Mexico, and, in particular, to protect their interests from adverse impacts of land use including to protect the City's residential areas from the haphazard, disorganized and indiscriminate location throughout the City of mobile homes as defined in NMSA 3-21A-2(B).

B. This chapter is adopted pursuant to the authority granted by the Constitution and laws of the State of New Mexico, including but not limited to, that contained in NMSA 3-21A et. seq. as amended and pursuant to the Manufactured Housing Requirements adopted by the New Mexico Manufactured Housing Division Title 14, Chapter 12, Part 2, the Manufactured Housing Act pursuant to 60-14-1 through 60-14-20 NMSA and the HUD 3280 Manufactured Housing Construction and Safety Standards and the HUD 3282 Procedural Enforcement Regulations.

C. This chapter shall become effective from and after the date of its approval and adoption as provided by law.

D. *Relationship to Comprehensive Plan.* It is the intention of the City that these regulations are adopted in conformance with and to implement the Hobbs Comprehensive Plan. Consistent with Section 3-21-5, NMSA 1978, these regulations are designed to: lessen congestion; secure safety from fire, flood waters, panic, and other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; and control and abate the unsightly use of buildings or land. Also, it is the intention of the City in adopting these regulations, to give reasonable consideration, among other things, to conserving the value of buildings and land throughout its jurisdiction.

***Editor's note—**Ord. No. 980, § 1D(2)—(12), adopted March 17, 2008, amended Ch. 15.24, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 15.24 pertained to similar subject matter. See the Code Comparative Table and Disposition List for a detailed analysis of inclusion.

Editor's note—Contained herein are the provisions of the former Ch. 15.34. Upon the request of the city, dated 6-8-2010, Ch. 15.24 has been redesignated as Ch. 18.04 of Title 18, Planning and Development. The historical notations have been preserved for reference purposes.

E. *Relationship to Other City Regulations and Private Deed Restrictions.*

1. If any provision of these regulations imposes a higher standard than that required by any other City regulation not contained in these planning regulations, the provisions of this chapter control. If any provision of any City regulation not contained in these planning regulations imposes a higher standard that regulation controls.
2. *Relationship to Private Restrictions.* The provisions of this chapter are not intended to abrogate any deed restriction, covenant, easement or any other private agreement or restriction on the use of land; provided however that where the provisions of this chapter are more restrictive or impose higher standards than a private restriction, the requirements of this chapter shall control. Private restrictions shall not be enforced by the City.

F. *Effect on Existing Permits.* This chapter is not intended to abrogate or annul any permits issued before the effective date of the provisions of this chapter.

G. *General rules and regulations.*

1. The issuance of a manufactured home building permit does not release the applicant from conditions of any applicable subdivision restrictive covenants or deed restrictions or Manufactured Housing Division regulations.
2. Manufactured homes are prohibited for commercial use unless the unit is brought into compliance for commercial use. A building permit is required before final approval and a certificate of occupancy is granted.
3. No manufactured home shall be a nuisance to public safety by creating fire hazards or any hazard to life. If found to be hazardous to life as stated, the City may take action to remove, relocate, clean or clear the property as stated in Chapter 8.24.
4. No manufactured home, recreational vehicle, travel trailer or similar use, shall be used as an addition to a regular dwelling unit.
5. No two (2) singlewide manufactured homes are to be used as a multiunit unless the mobile home is designed and made to comply with manufactured housing division regulations.
6. *Grandfather clause.*
   a) If a residence is condemned or burned in an area where no manufactured housing is allowed, a multi-section manufactured housing unit will be allowed for placement providing all other City and State requirements are satisfied, including private deed restrictions.

b) An existing mobile home park having a minimum of four (4) spaces shall be allowed to remain in place providing that the requirements of this chapter are met; the mobile home park was fully operational at the time of adoption of this chapter; and the mobile home park is operated continuously without a twelve-month break in operation following the effective date of this chapter.

(Ord. No. 980, § 1D(2), 3-17-2008)

18.04.020 Definitions relating to mobile homes and manufactured homes.

[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:]

Aggrieved Party - Any person who has a property interest that may be directly impacted by a decision of the City Planning Board.

Attached Housing Unit - A housing unit or residential structure that is attached to another residential structure, such as a unit in a duplex or four-plex or an attached townhome or condominium with a common wall to another housing unit.

Comprehensive Plan and Major Thoroughfare Plan - The term "Comprehensive Plan" shall mean the most recently adopted Comprehensive Plan for the City of Hobbs, including text, tables, maps and subsequent amendments and the adopted "Major Thoroughfare Plan" and the adopted "Hobbs Urban Growth Map".

Detached Housing Unit - A housing unit or residential structure, including any attached carport or garage that is designed, constructed and/or located as a separate residential housing structure with complete separation from any other adjacent residential structure. A mobile home, manufactured home, whether single wide or multi-section, is defined as a detached housing unit, and as such is not designed to connect with a common wall to another housing unit.

Manufactured Home - Means a movable or portable housing structure over thirty-two (32) feet in length and over eight (8) feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two (2) or more units separately tow-able but designed to be joined into one (1) integral unit, as well as a single unit. "Manufactured home" does not include recreational vehicles or modular or pre-manufactured homes, built to Uniform Building Code standards, designed to be

permanently affixed to real property. "Manufactured home" includes any movable or portable housing structure over twelve (12) feet in width and forty (40) feet in length which is used for nonresidential purposes.

Manufactured Housing - As used in the Manufactured Housing and Zoning Act [3-21A-1 NMSA 1978]: "multi-section manufactured home" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six (36) by twenty-four (24) feet and at least eight hundred sixty-four (864) square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended to the date of the unit's construction, and installed consistent with the New Mexico Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations.

Mobile Home Park - shall have the meaning provided in Section 47-10-2 NMSA, 1978, as amended: a parcel of land used for the continuous accommodation of twelve (12) or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees or assignees. "Mobile home park" does not include mobile home subdivisions or manufactured home subdivisions.

Mobile Home - Single Wide (Trailer) - As used in the Manufactured Housing and Zoning Act [3-21A-1 NMSA 1978]: "mobile home means a movable or portable housing structure larger than forty (40) feet in body length, eight (8) feet in width or eleven (11) feet in overall height, designed for and occupied by no more than one (1) family for living and sleeping purposes that is not constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or International Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code.

Mobile Home Subdivision - a subdivision on a parcel of land a minimum of one (1.0) acre and designed and developed for long term residential use and intended for sale or use where the principal residential structures are either mobile homes or manufactured housing.

Modular Housing or Modular Structures - Residential Housing and other structures which are regulated pursuant to the State of New Mexico Administrative Code Title 14, Housing and Construction, Chapter 12 Manufactured Housing, Part 3 Modular Structures.

NMAC or NMAC Rules - shall mean the State of New Mexico Administrative Code Title 14, Housing and Construction, Chapter 12 Manufactured Housing or subsections thereof.

Non-Conforming Mobile Home, Mobile Home Park, and Recreational Vehicle Park - Nonconforming means a lawfully occupying mobile home or mobile home park, or recreational vehicle park existing within the City limits of Hobbs at the time the provisions of this chapter became effective and which does not conform to the regulations of the planning district map in which it is located.

Planning District 1. Mobile Home Park Planning District (MHP). The Mobile Home Park district is established to provide for locations, usually under a single ownership, in which multiple detached "mobile home" units may be placed with appropriate development standards to ensure adequate spacing, access and open space. The district is especially intended for existing older-model units that are not classified under the U.S. Department of Housing and Urban Development (HUD) standards as "manufactured homes" and/or may not comply with current minimum size standards or construction codes. "Manufactured home" units may also be placed within an MHP district but, under state law, must also be accommodated within other residential areas where "mobile home" units may be restricted. No new Mobile Home Parks may be established unless all requirements of this chapter and the Municipal Code and applicable state law are met. The minimum area required for a MHP district is two (2.0) acres.

Planning District 2. Mobile Home Subdivision Planning District (MHS). The Residential - Mobile Home district is established to allow for areas in which a "mobile home," as defined in this chapter, may be placed on an individual lot outside of a defined Mobile Home Park (as provided for in the MHP district), provided it meets all other applicable requirements of this chapter and the Municipal Code. Depending on the area, this could result in a series of lots containing only mobile homes or situations in which mobile homes might be interspersed with site-built housing and/or "manufactured homes," as defined in this chapter. This district is provided in recognition of the ongoing need for this form of lower-cost housing in

Hobbs, and also given the extent of relatively small, narrow lots in some areas of Hobbs, which has led to vacant and underutilized land in some cases. The minimum area required for a MHS district is one (1.0) acres.

Planning District 3. Recreational Vehicle Park Planning District (RVP). The Recreational Vehicle Park district is intended for temporary, short-term occupancy of travel trailers, motor homes, pick-up campers, converted buses, tent-trailers or similar devices used for temporary portable housing. Recreational vehicle park districts shall have a minimum area of one (1.0) acre.

Recreational Vehicle or Travel Trailer - Recreational vehicle means a vehicle which is: (1) built on a single chassis; (2) four hundred (400) square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently tow-able by a light duty truck; (4) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

Recreational Vehicle Park - Recreational vehicle park or travel trailer park means a plot or parcel of land designed and developed specifically for the short-term, temporary occupancy of travel trailers, motor homes, pick-up campers, converted buses, tent-trailers or similar devices used for temporary portable housing.

Residential Housing Standards - These standards relate to exterior appearance and are intended 1) to improve the overall image and visual quality of the city in order to promote better neighborhoods and economic development; 2) to improve the quality of development, increasing its value and promoting its marketability; and 3) to improve the curb appeal of private residential development through the use of higher quality exterior materials and building design features. The primary emphasis is to improve the appearance of manufactured housing on individual lots within the City. However, due to the complexities of state regulations, all detached housing units, including site build and modular housing units must be addressed by these standards.
(Ord. No. 980, § 1D(3), 3-17-2008; Ord. No. 1005, § 3, 12-15-2008)

18.04.030 Permitted locations for mobile homes, manufactured housing, recreational vehicles and travel trailers within the City of Hobbs.

A. *Permitted Locations.*

1. Single wide mobile homes are permitted to be located in mobile home parks and on individual lots in mobile home subdivisions.

2. Travel trailers and recreational vehicles are permitted to be located in mobile home parks and recreational vehicle parks.

3. Manufactured housing as defined herein is permitted to be located in mobile home parks, and on individual lots in mobile home subdivisions and on individual lots or parcels in any other residential subdivision within the City of Hobbs where manufactured housing is not restricted by private deed restrictions or through recorded restrictive or protective covenants, which may restrict the location of manufactured housing. The term "manufactured homes" specifically refers to a home built entirely in a protected environment under a federal code set by the U.S. Department of Housing and Urban Development (HUD). The term "mobile homes" describes factory-built homes produced prior to the June 1976 HUD Code enactment.

4. Manufactured housing as defined herein is permitted to be located on individual lots or parcels in any other residential subdivision within the City of Hobbs where manufactured housing is not restricted by private deed restrictions or through recorded restrictive or protective covenants, which may restrict the location of manufactured housing, subject to the Residential Housing Standards as noted in Section 5.24.060 H. of this chapter.

B. *Nonconforming Mobile Homes.*

1. Following the effective date of adoption of this chapter, new locations of single wide mobile homes are not permitted to be located on individual lots or parcels, except as permitted by this chapter in mobile home parks, mobile home subdivision.

2. *Existing Mobile Homes.* A Mobile Home which does not meet the requirements of this chapter but lawfully existed within the City of Hobbs upon adoption of this chapter shall be allowed to continue and be maintained on the same land site provided it continues to meet all other applicable requirements of the Municipal Code. If requested, the City will prepare a letter verifying the nonconforming status of a mobile home.

C. *Replacement of Nonconforming Existing Mobile Homes.*Replacement of a mobile home or single wide manufactured home existing prior to the adoption of this chapter, but which is not located in a mobile home park (MHP) or mobile home subdivision planning district on the same land site, is permitted only by approval of a home replacement permit, and shall meet all rules, requirements and procedures in Section 18.04.070 F. of this chapter. A home replacement permit must be approved by the City, pursuant to Section 18.04.070 F. herein.

D. *Relocation of Nonconforming Mobile Homes.* A mobile home lawfully existing prior to the effective date of the provisions of this chapter may only be moved from its current location to a land site within either a mobile home park (MHP) or a mobile home subdivision (MHS). Any such unit proposed for relocation must be determined to be a "habitable" structure pursuant to the NMAC Section 14.12.2.22 and must be a safe and suitable dwelling unit for human habitation, and the unit must satisfy all other applicable requirements of this chapter and the Municipal Code.

E. An unlawful mobile home shall be relocated within one hundred eighty (180) days of the adoption of this chapter. An unlawful mobile home exists if any of the following apply: the unit is unsafe; has no City or State permit; violates City setbacks contained in the Major Thoroughfare Plan; shares the same lot with another principal structure; does not have appropriate skirting or insulation; or for any other violation of the Municipal Code.

F. *Nonconforming Recreational Vehicles and Travel Trailers.*

1. A recreational vehicle or travel trailer existing prior to the effective date of the provisions of this chapter may only be moved from its current location to a land site within either a recreational vehicle park (RVP) or a mobile home park (MHP) planning district. All nonconforming recreational vehicles and travel trailers are not permitted to be located on individual lots or parcels, following the adoption of this chapter.

2. *Continuation of Nonconforming Recreational Vehicles and Travel Trailers.* A recreational vehicle or travel trailer lawfully existing and occupied within the city prior to the effective date of the provisions of this chapter, but which is not located in either a recreational vehicle park (RVP) or mobile home park (MHP) planning district, shall be allowed to continue and be maintained on the same land site for a period not to exceed ninety (90) days following the effective date of adoption of this chapter, provided it continues to meet all other applicable requirements of the Municipal Code. All recreational vehicles and travel trailers shall be removed from individual lots or parcels by the owner within ninety (90) days following the date of adoption of this chapter.

3. Except that as approved by the City Planner or designee, arrangements for one (1) temporary RV or travel trailer may be approved in construction yards, or as a temporary industrial project, or other temporary arrangement; or for one (1) permanent RV or travel trailer location to be located in an outdoor industrial yard to be used as quarters for a night watchman.

G. *Modular Housing or Modular Structures.* As defined herein, modular housing and modular structures are not affected by this chapter.

H. Location of an occupied mobile home, manufactured housing unit, recreational vehicle or travel trailer on a lot with another housing unit or any occupied building or structure is not permitted. Unoccupied recreational vehicles may be parked on a lot containing another principal structure as long as the unit is not parked in the required front, rear and sides setbacks, and as permitted by deed restrictions or restrictive covenants. Parking of recreational vehicles in the right-of-way of a public street or alley is not permitted.

I. All mobile home and recreational vehicle locations shall be consistent with City Floodplain Management Ordinance provisions.
(Ord. No. 980, § 1D(4), 3-17-2008)

18.04.040 Permitted locations for mobile home park planning districts, recreational vehicle planning districts and mobile home subdivision planning districts.

A. *Planning District Map for Mobile Home Parks (MHP), Recreational Vehicle Parks (RVP) and Mobile Home Subdivision Planning District (MHS).*

Planning District Map. The locations and boundaries of the various planning districts established by this chapter are shown on the Planning District Map which accompanies this chapter. This map and all notations, references and other information on it, and all amendments to it, shall be as much a part of this chapter as if fully set forth and described herein. Only the Hobbs Planning Board and/or the City Commission may amend the Hobbs Planning District Map according to the procedures herein this chapter.

B. *Review Criteria and Interpretation of District Boundaries.* The Planning Division is responsible for custody of the official Hobbs Planning District Map and will promptly make any changes approved by the Planning Board. Boundaries shall follow platted lot lines, street and alley right-of-way boundaries, etc. The same shall apply for section lines, survey or other property lines, and municipal boundaries. Actions of the Planning Board establishing or amending a planning district boundary will take precedence over any conflicting information shown on the map. The Planning Division shall interpret the planning district boundaries if there is any uncertainty regarding official planning district boundaries.

C. *Planning Districts.* Planning Districts included on the Planning District Map include the following:

Mobile Home Park Planning District (MHP);

Mobile Home Residential Subdivision Planning District (MHS);

Recreational Vehicle Park Planning District (RVP).
(Ord. No. 980, § 1D(5), 3-17-2008)

18.04.050 Special use permit approval procedures for planning district map amendment.

A. *Special Use Permit Approval Process for Approval of Map Amendment of the Official Planning District Map (New Planning Districts) for Mobile Home Parks, Recreational Vehicle Parks and/or Mobile Home Subdivision - Application Procedure.* An application for an amendment to the official Planning District map may be initiated by a property owner filing a complete application with the Planning Division in a form established by the City. The application shall include the following information:

Name, address and telephone number of applicant and owner;

Legal description of the property that is the subject of the proposed amendment;
A statement of the reasons why the amendment is being requested; and

Other information or documentation necessary to process the application, as required by the Planning Division. The property owner must sign the application for the planning district boundary change. Compliance with such information is necessary to place the application on the Planning Board agenda. The City Planning Division or Planning Board may require an applicant for map amendments to submit such technical studies as may be necessary to enable the proper evaluation of the application. Required studies may include, but are not limited to, traffic studies, engineering studies, noise studies or neighborhood and/or economic impact reports.

B. *Planning Board Review, Public Hearing and Decision Making Process.* The Planning Board shall, after due notice herein, conduct a public hearing on the proposed map amendment. At the public hearing the Planning Board shall consider the application, the relevant supporting materials, and all comments and written materials submitted by the public at the public hearing.

The Planning Board may give consideration to the following criteria, to the extent pertinent to the application. In addition, other factors may be considered which may be relevant to the application.

Conformance of the proposed map amendment with the City's land use policies contained in the adopted Comprehensive Plan.

The character of the neighborhood.

The adjacent residential areas, nearby properties, and the extent to which the proposed new residential development of a MHP or RVP would be compatible.

The extent to which the proposed use would affect the capacity or safety of that portion of the street network, other public facilities or utilities, or existing parking problems in the vicinity of the property.

The extent to which approval of the application would diminish the character of the neighborhood.

The possibility that an error was made when the existing planning district map was created.

C. If approved, the Planning Board must find that the map amendment must foster implementation of the City's adopted Comprehensive Plan; or the area of the proposed change is different from surrounding land because it could function as a transition between adjacent neighborhood areas.

D. After the public hearing, the Planning Board shall adopt and transmit a final decision report to the applicant. The concurring vote of a simple majority of all current members of the Planning Board (four (4) of six (6) members) is necessary to approve any map amendment. The decision report for applications denied by the Planning Board shall state the reasons why the Planning Board denied the application. The decision of the Planning Board is final unless the applicant or any aggrieved party files a written appeal to the City Clerk within fifteen (15) days of the date of the meeting of the Planning Board when the action occurred. A re-application for a map change request on the same property may not be considered within two (2) years of the date of final action on the prior application.

E. *Conditional Stipulations Permitted.* In the exercise of its powers to review and approve map amendments, variance and other provisions of this chapter, the Planning Board is authorized to make a conditional approval of a map amendment or a variance, and to place any reasonable conditions on an application in the standard course of approving the map amendment or variance.

F. *Public Notice of Proposed Actions.* Public notice of hearings held before the Planning Board, unless otherwise required by law, shall be given as provided in this section.

1. *Published General Notice.* On or before the fifteenth day before the date of any public hearing involving the establishment or amendment of any district boundary, consideration of a special use permit, or a proposed variance from any planning regulation, the Planning Division shall publish in the local newspaper of general circulation in the City of Hobbs a public notice stating the date, time and place of the public hearing at which all parties in interest and citizens shall have an opportunity to be heard. The notice shall include a short description of the proposed action, the subject property and how additional information can be obtained.
2. *Mailed Notices.* Whenever a planning district map amendment special use permit is proposed for an area, the Planning Division shall mail notice of the public hearing by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a map amendment special use permit and to all other owners within the greater of two hundred (200) feet of the subject area, or one hundred (100) feet, excluding public right-of-way, of the subject area. The mailing shall be posted on or before the fifteenth day before the date of the public hearing.
3. *Notice of Proposed Variances.* Whenever a variance from the regulations herein are proposed on a property, the Planning Division shall follow the same legal notice and mail notice procedures as noted above for a map amendment public hearing.
4. *Posting of Notice Signs.* Public notice of required public hearings on property owner applications for a planning district map amendment special use permit application shall also be provided by way of a sign posted at least ten (10) days before the date of the public hearing on the property that is the subject of the application. One (1) sign shall be posted by the Planning Division for each five hundred (500) feet of frontage along a public street, with a maximum of three (3) signs required per frontage. Signs shall be located so that each sign is clearly visible from the street, or visible from the nearest public street.
5. The City may charge a reasonable fee to cover the cost of the required mailing.

(Ord. No. 980, § 1D(6), 3-17-2008; Ord. No. 1005, § 1, 12-15-2008)

18.04.060 Design standards.

A. *Mobile Home Parks (MHP) Design Standards.*

1. *Mobile home space.*

Minimum Area: Square footage: Three thousand one hundred fifty (3,150) square feet.

Width: Thirty-five (35) feet.

Corner space width: Forty-five (45) feet.

Depth: Ninety (90) feet.

Setbacks and spacing (minimum including awnings, canopies, decks and any other structures attached to, adjacent to or touching a mobile home).

Dwelling unit front setback: Twenty-one feet.

Dwelling unit side setback: Five (5) feet.

Dwelling unit rear setback: Ten (10) feet.

Corner lot side setback: Fifteen (15) feet.

MHP boundary to any internal dwelling unit: Ten (10) feet, except adjacent to public right-of-way.

MHP boundary to any internal dwelling unit: Twenty-five (25) feet adjacent to public right-of-way.

Dwelling unit to any building including accessory building: Ten (10) feet.

Thirty-five (35) feet setback is required from any property line of an abutting residential use existing prior to the MHP. However, this setback may be reduced five (5) feet for each additional one (1) foot of height to the exterior wall height, but the setback shall not be less than ten (10) feet to the existing residential area boundary.

Ten (10) feet setback is required to any other unit.

Minimum size is two (2.0) acres and used for the continuous accommodation of twelve (12) or more occupied mobile homes.

Only one (1) dwelling unit per mobile home park space.

All mobile home park site plans shall have a landscape plan meeting City Landscaping Standards.

2. *Standards for screening, buffering, walls, etc.*

   a. All MHP shall have opaque perimeter walls and/or fences at least six (6) feet in height (measured at ground level on the exterior of the MHP) completely installed prior to the issuance of a certificate of occupancy for the MHP or each phase of the park development. Walls, fences, and hedges shall conform to the City Building Code and Landscaping Ordinance. A clear-sight triangle of twenty (20) feet in both directions on the mobile home space from the corner of the internal streets is required. A clear-sight triangle of at least twenty-five (25) feet is required at all MHP entrances and exits.

   b. All fences shall be located on or inside the property line or property boundary. The wall or fence shall be constructed on all boundaries of the MHP and/or RVP except for street frontages. On street frontages, the fence shall be setback a minimum of ten (10) feet. Wood fences shall require regular maintenance and a wood fence shall be replaced as necessary to maintain the buffer.

3. Utility placement shall be according to the Utility Services Policy.

4. Federal, state and local accessibility requirements shall be met.

5. Streets and access standards.

   a. All MHP shall have direct motor vehicle access from a public street, preferably a collector or higher designated street.

   b. Each mobile home space shall have direct access to an internal street. Direct access from an interior mobile home lot to exterior public streets shall be prohibited.

   c. All streets, excluding sidewalks, within a MHP shall meet standards of the City Engineer and be surfaced with two-inch HMAC over an acceptable base course for private and public streets pursuant to the Major Thoroughfare Plan with the following minimum widths required as shown on the following table:

MHP and RVP Streets	Parallel Parking	Paving Width (Feet)
Internal Street, one way	No	21
Internal Street, one way	One side	27
Internal Street, one way	Both sides	35
Internal Street, two way	No	27

MHP and RVP Streets	Parallel Parking	Paving Width (Feet)
Internal Street, two way	One side	30
Internal Street, two way	Both sides	35

d. No street within a mobile home park shall have a dead end, except for cul-de-sac streets, which shall have a minimum turning radius of forty-eight (48) feet, or an alternate turn-around area as approved by the City Engineer.

e. There shall be a network of sidewalks connecting common and/or public areas and on-site MHP service facilities with internal streets.

f. Walkways (concrete, asphalt or unpaved surface) are encouraged where pedestrian traffic may be significant in the MHP or RVP.

g. The MHP, including mobile home sites and streets shall be designed to insure proper drainage. A drainage plan including elevations and drainage calculations shall be approved by the City Engineer. Curbing and gutters are optional unless required by the City Engineer as deemed necessary for drainage.

h. Street lighting shall be provided to illuminate all private and public access ways and walkways for the safe movement of vehicles and pedestrians at night. All outdoor lighting shall comply with the Municipal Code and the New Mexico Night Sky Statute.

i. Two (2) parking spaces per dwelling unit shall be located on each mobile home space, in compliance with the Major Thoroughfare Plan. Except that the City will consider alternative proposals for cluster lots with common parking areas and lots, separate assigned covered parking spaces or assigned enclosed group garage buildings as long as the parking requirements from the Major Thoroughfare Plan are addressed.

j. No internal street intersections shall be less than one hundred twenty-five (125) feet from MHP entrances/exits or other internal street intersections. Each intersection, internal and external, shall be designed as close to ninety (90) degrees as possible.

6. *Signs.* Signs shall conform to the City's sign code.

7. *Refuse.* Each MHP shall provide adequate refuse collection facilities, constructed and maintained in accordance with all health regulations, to be properly screened, and designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least twice a week.

8. *Storage.* The site plan may include the design for storage units and/or an area for vehicle parking/storage, or RV storage, as provided by the MHP owner or tenant. Each storage unit shall be anchored permanently to the ground, either on each mobile home site, or grouped into a mini-storage building arrangement. All storage units shall be setback a minimum ten (10) feet from any dwelling unit.

9. *Expansion or alteration.* Any existing MHP desiring to expand its area or alter its approved site plan shall do so in accordance with the provisions of this chapter.

10. Permitted uses in a MHP include Residential mobile homes with complete hookup to utilities. Manufactured homes or site built homes are permitted. Accessory buildings, swimming pools and recreation areas and buildings; Convenience establishments of a commercial nature, including laundries, stores, beauty shops and barbershops, may be permitted in mobile home parks subject to the following restrictions: Each such commercial establishment must meet City parking requirements; Shall be located, designed and intended to serve frequent trade or service needs primarily for residents of the park; and shall present no visible evidence of their commercial character outside the park.

B. *Recreational Vehicle Park (RVP) Design Standards.* This section applies to recreational vehicles as defined in Ordinance 15.05 of the Municipal Code.

1. Overnight stays of a temporary nature are permitted in a motorized or non-motorized vehicle. The vehicle shall be specifically designed or modified for overnight accommodation.

2. Designated spaces within the park to accommodate individual recreational vehicles shall have minimum dimensions of thirty-five (35) feet width and sixty (60) feet. Pull-through spaces shall be at a sixty-degree angle, if possible. Spaces along the perimeter may be at a ninety-degree angle.

3. Pads for parking recreational vehicles shall be placed such that the side yard will be on the right side of the recreational vehicle, so that the vehicle's entry door opens to the yard.

4. Recreational vehicles within the park shall observe the following minimum setback requirements at all times:

   a) Thirty-five (35) feet setback is required from any property line of an abutting residential use existing prior to the RVP. However, this setback

may be reduced five (5) feet for each additional one (1) foot of height to the exterior wall height, but the setback shall not be less than ten (10) feet to the existing residential area.

b) Seven (7) feet from edge of parking pad to side boundary of designated recreational vehicle space;

c) Seven (7) feet from any interior street or sidewalk.

d) Ten (10) feet separation or distance is required between any RV unit to any other RV unit.

5. Utility services, sanitation, fire protection and street lighting shall be provided subject to City review and approval procedures. A drainage plan for the park shall be submitted for review and approval by the City Engineer.

6. Adequate internal sidewalks shall be provided for access to any community buildings or facilities used by park patrons, such as a pavilion, convenience store, laundry, showers, swimming pool, or restrooms.

7. Recreational vehicle parks shall comply with all requirements of the Municipal Code pertaining to recreational vehicles and fire protection standards for recreational vehicle parks.

8. All applicable rules and design standards for street and other development requirements shall be applicable for recreational vehicle parks. Except that paving requirements are to pave the entrance streets for a minimum distance of one hundred (100) linear feet and all customer service parking areas and at office locations.

C. *Lot of Record for MHP or RVP.* The Planning Division will determine if the property contained within the site plan is an appropriate lot of record. If necessary, a summary subdivision or lot replat may be required to create the appropriate lot of record to correspond to the same area of the site plan.

D. *Mobile Home Subdivisions.* Mobile Home Subdivision (MHS) design shall comply with all sections of the City Subdivision Regulation. MHS shall include a fifty (50) feet setback from any property line of an abutting residential use existing prior to the MHS. The minimum lot size in a mobile home subdivision shall be four thousand (4,000) square feet and the minimum lot dimensions shall be thirty-five (35) feet by one hundred (100) feet. Fifty (50) feet setback is required from any property line of an abutting residential use existing prior to the MHS. Corner lot side setback must be a minimum of fifteen (15) feet.

E. *Non-Conforming Mobile Home Park (MHP) and Nonconforming Recreational Vehicle Park (RVP).*

1. *Design Standards Waiver for Non-Conforming Mobile Home Park (MHP) and Nonconforming Recreational Vehicle Park (RVP).* Following the effective date of adoption of this chapter, any existing mobile home park (MHP) of recreational vehicle park (RVP) deemed to be non-conforming to the design standards herein, a waiver and abatement of the provisions of this chapter are granted to those existing facilities for a period of five (5) years following the effective date of adoption of this chapter.
2. However, all new mobile locations and recreational vehicle placements in existing nonconforming MHP or RVP must be consistent with the provisions herein, including the size of spaces and setbacks.

F. *Minimum Lot Width for All City Residential Lots and Minimum Mobile Home Park Space Width and Minimum Recreational Vehicle Park Space Width.*

1. The minimum lot width for all City residential lots containing detached housing units of all types shall be thirty-five (35) feet). The minimum space width in mobile home parks and recreational vehicle parks shall be thirty-five (35) feet).
2. The minimum lot width for all City residential lots containing attached housing units of all types shall be twenty-five (25) feet).

G. *Setback requirements For Manufactured Homes on Individual Lots.*

1. Front yard and Corner lot street-side yard setback requirements for placement of all manufactured homes shall comply with the adopted Major Thoroughfare Plan Section of the City Comprehensive Plan.
2. Non-street Side Yard Setback. The minimum width of each side yard shall be five (5) feet from property line.
3. Rear Yard Setback. The minimum depth of rear yard shall be five (5) feet from property line.
4. No manufactured home shall be located less than ten (10) feet from any other structure, including porches, patios or additions to the unit unless is an addition to the basic unit.

H. *Residential Housing Standards.*

1. *General Purpose.* Regulations in this Section have been established in accord with the Comprehensive Plan for the purpose of promoting the

health, safety, morals, and the general welfare of the city. These regulations therefore are intended 1) to improve the overall image and visual quality of the city in order to promote better neighborhoods and economic development; 2) to improve the quality of development, increasing its value and promoting its marketability; and 3) to improve the curb appeal of private residential development through the use of higher quality exterior materials and building design features. The goals of the Residential Housing Standards process in general are to allow residents a newer and more modern exterior appearance with a better built, more energy efficient and safer home. The primary emphasis is to improve the appearance of manufactured housing on individual lots within the City. However, due to the complexities of state regulations, all detached housing units, including site build and modular housing units must be addressed by these standards.

2. Residential Housing Standards are applicable to all modular and site built homes built in Hobbs. All such modular and site built homes also must meet International Residential Code Standards, as enforced by the City Building Official.

3. For factory build homes, only manufactured homes meeting HUD and State of New Mexico standards will be approved. No structure of a temporary character, trailer, mobile home, camper, recreational vehicle, tent, or other temporary structure shall be used on any lot any time as a replacement home either temporarily or permanently. A mobile home as defined herein is a movable or portable housing structure larger than forty (40) feet in body length, eight (8) feet in width or eleven (11) feet in overall height, designed for and occupied by no more than one (1) family for living and sleeping purposes that is (not) constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code.

4. For a factory build manufactured housing home, the bottom of the factory build home, "The Enclosure" must be professionally installed and must be constructed of material that matches the home and/or is similar and enhances the beauty. A trim piece is required at the bottom of home and top of enclosure. No vinyl enclosure will be permitted. If the home is set above ground, a perimeter curb shall be required to install the enclosure. No temporary steps shall be allowed. Each dwelling, if set above ground, shall have a professional built step with a minimum five-foot by five-foot landing

and railings. Each dwelling, if set in ground, shall have a concrete step structure with a minimum three-foot by four-foot landing. Factory build homes must have tongue, axles, and wheels removed, and are enclosed at the time of set up.

5. *Skirting Standards.* Skirting standards for factory build homes require paint of a matching or complimentary color, and materials compatible with the structure. Bales of hay, rusty, wrinkled metal, dirt, tires, etc are expressly forbidden. Peeling paint is not permitted. The use of galvanized metal, plastic or fiberglass panels, or plywood or other composite wood product not designed for skirting a mobile home, is prohibited. Skirting or underpinning materials should be of materials designed and manufactured for use as manufactured housing skirting, such as vinyl matching the color of the manufactured home.

6. The minimum lot width for a detached residential home or structure shall be thirty-five (35) feet at the building setback line. Only one (1) house shall be constructed per lot. However, other outbuildings incidental to residential use may also be constructed on the same lot. The lot of record must be a single tract or lot and not a combination of separate parcels.

7. No structure unfinished as to exterior shall be permitted to remain on any lot for a period exceeding six (6) months from the date of commencement of its construction. The roof of the main structure and any garage shall be constructed with a composition shingle roof or other material of better quality. A garage is not required, however any garage built is recommended to be built similar to the home. It should match or be of similar material and enhance the beauty of the property.

8. The exterior of the principal living structure shall be stucco, stone, masonry, masonry-veneer, brick, stone-veneer, brick-veneer, hardboard or wood siding construction. Exterior appearance shall be attractive and compatible with other homes in the same neighborhood. Alternative exterior materials will be reviewed and considered by the City through the variance process.

9. No boarded up windows are to be permitted in a replacement home. The structure must be covered with paint materials of a complimentary color inset into the window frame, and not merely tacked over the opening. The roof must be in good condition without leaks so as not to create damp, moldy, and unsafe conditions.

10. Additionally, buffers or buffering materials should be of masonry or planted construction, to reduce unsightly buffering effects.

11. *General Concerns.* If upgrading from one (1) unit to a hopefully newer model, all yard setbacks must be adhered to as specified in the Major Thoroughfare Plan. If any variance is required for setbacks or any design or appearance code, the administrative variance and variance provisions in this Section shall be followed. Also, the City will enforce the lot of record requirements from above, which may require a replat to combine smaller lots being made into a larger building site.

(Ord. No. 980, § 1D(7), 3-17-2008)

18.04.070 City permits required; inspections and permit approval procedures.

A. *City Permit Required for All Mobile Homes.* Building Official. Each mobile home to be located in a mobile home park or a mobile home subdivision shall require a mobile home placement permit to be issued by the City Building Official or his designee. The applicant must submit a site plan showing the location of the proposed mobile home installation including the location of the driveway, all structures connected to the mobile home such as porches, carports, etc., all other structures on the site, on-site parking spaces as required by the Major Thoroughfare Plan, location of utility service lines and any other on site facilities. All mobile homes shall meet minimum requirements of installation codes of the State of New Mexico and these standards of the City of Hobbs.

B. *City Manufactured Housing Placement Permits - Application.* Permits are required for the placement of a manufactured home and an application shall be made on a form provided by the City. The applicant shall submit the following:

1. Two (2) sets of drawings including, a plot plan showing the exact location of the unit on the property and the legal description, and a color photograph or illustration;

2. The year, model and size of unit and a copy of the State of New Mexico Permit shall be provided with the permit application. No units manufactured prior to 1976 will be allowed within the City limits unless proven to comply with HUD or IRC standards;

3. Additions, carports, garages, storage buildings, or other construction in a mobile home subdivision shall be constructed in accordance with all provisions of all State and City codes;

4. Setback requirements for all carports installed with a manufactured home shall comply with the adopted Major Thoroughfare Plan Section of the City Comprehensive Plan. No sidewalls on carports shall be allowed within twenty-one (21) feet of the front street right-of-way boundary.

C. *Placement and installation.*

1. The installation of a manufactured home shall follow all manufacturer's recommendations, the Manufactured Housing Division regulations, and City Codes.

2. The installation of gas, plumbing, mechanical and electrical shall comply with the requirements, and be permitted by the manufactured housing division, along with being inspected by the Manufactured Housing Division of the State of New Mexico.

3. Subsequent to placement of a manufactured home on any lot, an inspection shall be conducted before placement of the unit. The following inspections are required: (1) Setbacks; (2) tie-down; (3) final inspection. Manufactured home installed in flood zone shall comply with Section 15.36.170(D).

4. No manufactured home intended for residential use shall be placed on a lot already containing a single-family dwelling, multiple-family dwelling, commercial or public building or structure, or a manufactured home.

5. Manufactured homes shall be fitted with an underpinning or skirting as addressed in the Residential Housing Standards section herein. The underpinning shall form a continuous wall that extends around the perimeter of the unit with a minimum twenty-four (24) inches by twenty-four (24) inches access panel. Existing manufactured homes shall comply with skirting and all Residential Housing Standards within one hundred eighty (180) days, all others at final inspection.

D. *Specific City permit requirements are as follows:*

1. The application for the City permit for the mobile home shall be made prior to transporting the mobile home in the MHP space. Both the owner of the mobile home and the transport or moving company must be co-applicants on the permit; however, the transport company will normally obtain the permit.

2. The permit will be issued for only a ten-day permit period, and then will expire and a new permit must be obtained. The property owner (home owner) shall

submit a site plan of the mobile home space with the permit application. As part of the application, the property owner must stake the four (4) corners of the exact location where the mobile home is to be sited.

3. *City Moving Permits for Manufactured Housing.*

   a. Mobile homes shall not be moved into new locations during the weekend period, except as noted in subsection B.3.(b) below. The weekend period is hereby defined as from 5:00 p.m. Mountain Time on Friday afternoon until Monday morning at 7:00 a.m. Mountain Time. Mobile home also shall not be located during the evening and night times from 5:00 p.m. Mountain Time until 7:00 a.m. Mountain Time in the morning.

   b. The City will allow a Saturday delivery of a mobile home if a prior permit application and appointment is made with the Building Official prior to Thursday at 12:00 Noon during the same week that the Saturday delivery is requested. The Building Official must approve the permit application with the Saturday delivery request prior to Friday at 12:00 Noon in order for the Saturday delivery to be approved. Inspection of the placement of the mobile home will then be made by the Inspections Department.

   c. The Permit shall be placed in a conspicuous place at the job location.

4. All site-built structures, e.g., carport, are also required to have a City building permit.

E. *State Inspections Required.* State of New Mexico Manufactured Housing Division Inspectors are required to inspect all newly placed mobile homes and manufactured housing units. All state installation inspections include mechanical/electrical/blocking/sewer connections/skirting/ventilation/water and all other components pursuant to the NMAC Rules located in 14.12.2. The State of New Mexico permit process assures the consumer that the manufactured home is a safe place to live. The City Building Official will ensure proper coordination with the State of New Mexico on permits and permitting issues.

F. *Home Replacement Permit.*

1. Home replacement permits are issued by the Inspections Division and a home replacement permit shall be required to replace any existing residential structure with a newer residential structure.

2. Replacement of a mobile home or manufactured home existing prior to the adoption of this chapter, but which is not located in a mobile home park

(MHP) or mobile home subdivision planning district on the same land site with an approved manufactured home must meet all rules and requirements and be consistent with all procedures in Section 18.04.070 F. of this chapter.

3. Replacement of any other type of residential structure or home existing within the City of Hobbs prior to the adoption of this chapter on the same land site with another site built and/or modular housing unit must meet all rules and requirements and be consistent with all procedures in Section 18.04.070 F. of this chapter.

(Ord. No. 980, § 1D(8), 3-17-2008)

18.04.080 Administrative procedures.

A. *Variances.*

1. Variances are authorized deviations from the property development standards in this chapter. A variance may be appropriate when strict enforcement would represent a unique, undue and unnecessary hardship on a particular property.

2. A complete application for a variance shall be submitted by a property owner, or an agent acting on behalf of the property owner, to the Planning Division, on a form prescribed by the City, along with a nonrefundable fee, which may be established from time to time by the City Commission. Under no circumstances shall a variance be proposed or considered that would authorize a use of property for a MHP or RVP that is not otherwise permitted in the applicable planning district.

B. *Planning Division Action on Minor Variations.* The Planning Division shall have the authority to find that a variance application involves a minor variation, which shall include any proposed variation from a property development standard in this chapter that would be a deviation of a minor nature from such adopted standard. In any such case, the Planning Division may grant an administrative approval that does not require any further review or action by the Planning Board. Any such approval must meet the conditions for considering variances herein. If the Planning Division determines that an application does not meet these conditions and does not merit approval, then the matter may be referred to the Planning Board for review and action if requested by the applicant. The record of Planning Division review and approval of minor variations shall be available for public inspection, upon reasonable request, during normal business hours.

C. *Planning Board Public Hearings on Variances.* For all variance applications not deemed minor by the Planning Division, the Planning Board, after due notice, shall hold a public hearing on an application for a variance. At the public hearing, the Planning Board shall consider the application, the report of the Planning Division, the relevant supporting materials and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall vote to approve, approve with conditions, or disapprove the application for a variance.

D. *Conditions for Considering Variances.* To approve an application for a variance, the Planning Board shall make an affirmative finding that each of the following criteria, without exception, is met:

Special circumstances must exist that are peculiar to the land and the special circumstances are not self-imposed or the result of the actions of the applicant.

Literal interpretation and strict enforcement of the terms and provisions of this chapter would cause an unnecessary and undue hardship. Granting the variance is the minimum action that will make possible reasonable use of the land or structure and which would carry out the spirit of this chapter and would result in substantial justice. Such variance will not alter the essential character of the district in which the property or structure is located or the property for which the variance is sought. Granting the variance will not adversely affect the health, safety or welfare of the public.

E. The Planning Board may impose such conditions on a variance as are necessary to accomplish the purposes of this chapter, to prevent or minimize adverse impacts upon the public and neighborhoods and to ensure compatibility. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

F. *Home Replacement Permit Requirements and Standards.*

1. *Application Procedures.* Application for a Home Replacement Permit shall be made to the Inspections Division. In addition to the application documents required for a City Building Permit under Section 18.04.060 A. above, the applicant must submit additional information on the replacement home proposed. The structure must be defined clearly in terms of appearance, exterior materials and trim, etc. If a manufactured home is proposed to be replaced with a manufactured home, then the color and appearance of skirting materials must be specified. A color photo or drawing of the replacement home should be provided with the permit application.

2. Review Procedures. Review of Home Replacement Permits will be conducted by the Inspections Division and the Planning Division of the City.

3. *Home Replacement Design and Performance Standards.*

   a. *General Purpose.* Regulations in this Section have been established in accord with the Comprehensive Plan for the purpose of promoting the health, safety, morals, and the general welfare of the city. These regulations therefore are intended 1) to improve the overall image and visual quality of the city in order to promote better neighborhoods and economic development; 2) to improve the quality of development, increasing its value and promoting its marketability; and 3) to improve the curb appeal of private residential development through the use of higher quality exterior materials and building design features. The goals of the replacement home permitting process in general is to allow residents a newer and more modern exterior appearance with a better built, more energy efficient and safer home.

   b. All modular and site built replacement homes must meet International Residential Code Standards.

   c. For factory build replacement homes, only manufactured homes meeting HUD and State of New Mexico standards will be approved. No structure of a temporary character, trailer, mobile home, camper, recreational vehicle, tent, or other temporary structure shall be used on any lot any time as a replacement home either temporarily or permanently. A mobile home as defined herein is a movable or portable housing structure larger than forty (40) feet in body length, eight (8) feet in width or eleven (11) feet in overall height, designed for and occupied by no more than one (1) family for living and sleeping purposes that is (not) constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code.

   d. For a factory build manufactured housing replacement home, the bottom of the factory build home, "The Enclosure" must be professionally installed and must be constructed of material that matches the home and/or is similar and enhances the beauty. A trim piece is required at the bottom of home and top of enclosure. No vinyl enclosure will be permitted. If the home is set above ground, a perimeter curb shall be

required to install the enclosure. No temporary steps shall be allowed. Each dwelling, if set above ground, shall have a professional built step with a minimum five-foot by five-foot landing and railings. Each dwelling, if set in ground, shall have a concrete step structure with a minimum three-foot by four-foot landing. Factory build homes must have tongue, axles, and wheels removed, and are enclosed at the time of set up.

e. *Skirting Standards.* Skirting standards for factory build replacement homes require paint of a matching or complimentary color, and materials compatible with the structure. Bales of hay, rusty, wrinkled metal, dirt, tires, etc are expressly forbidden. Peeling paint is not permitted. The use of galvanized metal, plastic or fiberglass panels, or plywood or other composite wood product not designed for skirting a mobile home, is prohibited. Skirting or underpinning materials should be of materials designed and manufactured for use as manufactured housing skirting, such as vinyl matching the color of the manufactured home.

f. The minimum lot width for a detached replacement home shall be thirty-five (35) feet at the building setback line. Only one (1) house shall be constructed per lot. However, other outbuildings incidental to residential use may also be constructed on the same lot. The lot of record must be a single tract or lot and not a combination of separate parcels.

g. No structure unfinished as to exterior shall be permitted to remain on any lot for a period exceeding six (6) months from the date of commencement of its construction. The roof of the main structure and any garage shall be constructed with a composition shingle roof or other material of better quality. A garage is not required, however any garage built is recommended to be built similar to the home. It should match or be of similar material and enhance the beauty of the property.

h. The exterior of the principal living structure shall be stucco, stone, masonry, masonry-veneer, brick, stone-veneer, brick-veneer, hardboard or wood siding construction. Exterior appearance shall be attractive and compatible with other homes in the same neighborhood. Alternative exterior materials will be reviewed and considered by the City through the variance process.

i. No boarded up windows are to be permitted in a replacement home. The structure must be covered with paint materials of a complimentary color

inset into the window frame, and not merely tacked over the opening. The roof must be in good condition without leaks so as not to create damp, moldy, and unsafe conditions.

j. Additionally, buffers or buffering materials should be of masonry or planted construction, to reduce unsightly buffering effects.

4. *Time Requirements.* The replacement home shall be allowed to be placed on the lot within one hundred eighty (180) days of the date of removal of the existing home.

5. *General Concerns.* Regarding concerns about upgrading from one (1) unit to a hopefully newer model, all yard setbacks must be adhered to as specified in the Major Thoroughfare Plan. Also, the City will enforce the lot of record requirements from above, which may require a replat to combine smaller lots being made into a larger building site. If any variance is required for setbacks or any design or appearance code, the administrative variance and variance provisions in this section shall be followed.

(Ord. No. 980, § 1D(9), 3-17-2008)

18.04.090 Site plan review.

A. *General Provisions and Applicability.* Prior to new construction for any new mobile home park or recreational vehicle park or modification or expansion of any existing such facility, the developer/owner shall submit to the City of Hobbs a site plan conforming to the format outlined below. Additionally, a site plan submittal or revision is required whenever there is any substantial change affecting parking requirements, fire protection or fire lane configuration, or a change in driveway location or a change in grading or drainage on the site. The site plan becomes the developer's application for a City Building Permit.

B. *Submission Requirements.*

1. *Drawings and Information Required.* Required site plans shall be prepared on a standard sheet size not to exceed twenty-four (24) inches by thirty-six (36) inches thirty-six (36) inches at a scale of one (1) inch equals one hundred (100) feet with a minimum font size of ten (10) point. Site plans shall also be submitted in electronic format. Required site plans shall be prepared by a registered engineer, in accordance with City regulations and policies.

2. *General Information Required.* North arrow; site acreage; scale (written and graphic); names of engineer, developer, property owner; legal survey of the

site and lot boundary; adjacent property lines, residential areas and structures; names of adjacent property owners; and existing easements on and adjacent to the site.

3. *Site Information Required.*

Location, dimensions of all proposed mobile home or RV sites and all new or existing buildings, if any;

Setback and separation distances between sites;

Proposed location of screening required by this or other ordinances of the City;

Proposed location of signs, fences, and other on-site structures;

Location all streets and sidewalks serving the site plan area including right-of-ways, easements, intersections within two hundred (200) feet;

Location of all parking and loading areas, including number and dimension of spaces;

Dimension of aisles, driveways, maneuvering areas and curb return radii;

Location of all existing and proposed fire lanes and hydrants; and

Proposed lighting plan.

Location of all landscaping, buffering and screening as required by Municipal Code and this chapter.

Geo-technical and grading report on soils, subsurface and drainage that demonstrates conformity with the City's drainage goals, objectives and standards, including direction of water flow, quantity of on and off-site water generation;

Topographic contours sufficient to evaluate drainage on and off site;

Proposed spot elevations;

Existing and proposed flow lines; and points of concentrated water discharge.

A preliminary drainage plan of the area showing the size and location of each existing and proposed drainage way and/or retention or detention area.

On-site water and sewer utility facilities.

On-site utility facilities for electric power, telecommunications, natural gas and cable TV.

C. *Site Plan Review and Submittal.*

1. Site plans for all mobile home parks and recreational vehicle parks shall be submitted to the Planning Division. The Planning Division will determine if all of the real property within the proposed site plan is contained in an existing MHP or RVP Planning District. If the site plan is contained in the appropriate planning district, then the review of the site plan will begin. If the property within the site plan is not in the appropriate planning district, an application must first be made to the Planning Board to change the Planning District Map to include the appropriate property, pursuant to the provisions of this chapter. The Planning Division will also determine if the site plan submittal is complete with all required submittal documents.

2. Site plan review will be coordinated by the Planning Division with input from Planning, Engineering, Inspections, Utilities, Public Safety and other departments concerned with the development process.

3. Based upon its review, the staff may approve, conditionally approve, request modifications or deny approval of the site plan based on evaluation of the site plan details with respect to criteria in this subsection.

4. Staff will complete a preliminary review of the site plan and issue written preliminary review comments within ten (10) calendar days following filing of a site plan which meets all submission requirements in this chapter. Following the preliminary review, the staff will review revised submittals and will issue a final review decision in writing within ten (10) days following filing of the revised site plan. The staff decision on a site plan is final unless appealed to the Planning Board as provided by this section.

5. *Site Plan Review Criteria.* In approving or denying a site plan under this article, the following criteria shall be considered:

   The extent to which the site plan fulfills the goals, objectives and standards in the City's Comprehensive Plan, Major Thoroughfare Plan, and other City policies and ordinances.

   Appropriate size of sites and spaces, required setbacks, distance limitations, and other density and dimensional requirements.

   Safety from fire hazards and measures of fire control;

   Protection from flooding and water damage; and noise and lighting glare effects on adjacent neighbors.

Adequacy of streets to accommodate the traffic generation of the proposed development; and adequacy of off-street parking and loading facilities for the uses specified.

Landscaping and screening provisions which meet requirements of the Municipal Code and this chapter.

Impact of the proposed development on the site and surrounding properties and neighborhoods.

Safety of the motoring and pedestrian public using the facility and areas surrounding the site.

Such other measures as might secure and protect the public health, safety, morals and general welfare.

6. *Effect of Site Plan Approval.*

   a) If development of a property with an approved site plan has not commenced within two (2) years from the date of final approval of the site plan, the site plan shall be deemed to have expired, and a review and re-approval of the approved site plan by the staff shall be required before a building permit may be issued.

   b) Extensions of the approval of the site plan may be granted for a six-month period, if there has been no related change in the City's development requirements since the last approval; there has been no significant change in the area surrounding the site since the last approval; and there is no change in the site plan as originally approved. There is no limit to the number of extensions a property owner may request.

   c) *Amendments.* All amendments to all applications and approvals shall be processed in the same manner as the original application. However, the applicant shall submit a summary of all elements that are proposed to be changed along with the revised plans and application.

7. *Minor Deviations During Actual Development.* The Planning Division may authorize minor deviations from the property development standards of this chapter that appear necessary in light of technical or engineering considerations first discovered during actual development and that are not reasonably anticipated during the initial approval process, as long as they comply

with the spirit and intent of this chapter. Minor deviations shall not include increases in the intensity of use or the introduction of uses not previously approved.

D. *Site Work.*

1. Sections 60A through 60E of the State of New Mexico Administrative Code Title 14, Housing and Construction, Chapter 12 Manufactured Housing, apply to person(s) performing the work to install homes on a site. Sections 60B through 60D thereof apply to the general requirements for sites. (Refer to [14.12.2.60 NMAC - Rp, 14 NMAC 12.2.53, 9-14-00] for reference.)

2. The person or persons performing the work to install a manufactured home, new, used, pre-owned or resold, shall review the intended installation site and determine that the site is suitable for the home and that the installation will comply will all local and state requirements prior to the installation. All manufactured home sites designed for either a non-permanent foundation or for a permanent foundation will comply with the following minimum standards:

   (a) Sites shall have acceptable soils to withstand the stresses and load bearing elements of the manufactured home to be placed upon the site.

   (b) New units shall comply with the soils criteria delineated by the manufacturer in the manufacturer's installation manual.

3. Sites shall be prepared in such a manner as to comply with all locally adopted zoning, planning and floodplain requirements. This standard applies to new and used, pre-owned or resold homes.

4. Permanent foundation sites shall be prepared in such a manner that positive drainage of surface water is maintained and directed away from the manufactured home and adjacent improvements. The perimeter completely around the manufactured home shall be sloped to provide positive drainage away from the home and prevent moisture accumulation under the home, unless the manufacturer's installation instructions or the local requirements for slope and drainage applies. Slope shall be one (1) percent to the property line or for twenty (20) feet.

5. Every manufactured home prior to installation shall have a site plan review approved by the City and shall illustrate the placement of the home on the site, the location of property lines, the zoning classification of the site, the

location, type and specifications of the septic system, water utility, electrical utility and service, and the gas utility source and size, if utilized. (Refer to [14.12.2.60 NMAC - Rp, 14 NMAC 12.2.53, 9-14-00] for reference.)

E. *Local Planning and Zoning Jurisdictions or Units Installed in Floodplain or Mudslide Areas.*

1. All installations of manufactured homes must comply with these Regulations [14.12.2 NMAC] and all locally adopted zoning and planning requirements.
2. Every dealer prior to delivery of a manufactured home sold shall have acknowledged by the consumer a document advising the consumer to check with the local governing body in the locality of the site where the home will be installed to determine installation requirements in flood zone areas. (Refer to [14.12.2.59 NMAC - Rp, 14 NMAC 12.2.52, 9-14-00] for reference.)

(Ord. No. 980, § 1D(10), 3-17-2008)

18.04.100 Appeals.

A. *Appeal of Staff Decision.* An appeal to the Planning Board of the staff's decision may be made if filed by the applicant in writing not more than fifteen (15) days after the date the applicant is officially notified of the staff decision. The applicant's appeal shall state all reasons for dissatisfaction with the action of the staff. The Planning Board may, by majority vote, approve, conditionally approve, or deny the site plan approval. The recommendation of the Planning Board is final unless the applicant requests in writing, within fifteen (15) days of the Planning Board action, a final review by the City Commission.

B. *Appeal of Planning Board Actions.* Any decision of the Planning Board concerning a request to change the planning district classification of property may be appealed by the applicant or any aggrieved party to the City Commission. Such appeals must be filed in writing to the City Clerk within fifteen (15) days following the date of the Planning Board action. The appeal hearing will be scheduled before the City Commission at a meeting after the minutes of the Planning Board are prepared and all parties have been notified of the request for an appeal.

C. *City Commission Review.* The staff will schedule a hearing on the appeal before the City Commission, forward the staff recommendation and the action of the Planning Board to the Commission, and notify the applicant of the hearing date. The City Commission may, by majority vote, approve, conditionally approve, or deny the site plan. The action of the City Commission is final.

(Ord. No. 980, § 1D(11), 3-17-2008; Ord. No. 1005, § 2, 12-15-2008)

18.04.110 Enforcement and implementation.

The City of Hobbs shall have the authority to enforce the requirements and standards of this chapter pursuant to Section 3-21-10, NMSA 1978.

A. The City of Hobbs intends to vigorously enforce this chapter. If any single wide mobile home, recreational vehicle or travel trailer is placed, located, or maintained, or is used any way in violation of this chapter, the City shall forthwith disconnect City utilities and other utilities from the offending dwelling unit and also disconnect utilities to any structure providing utilities to the offending unit. A minimum fine of two hundred fifty dollars ($250.00) per day shall be levied for each violation of the sections of this chapter. The City of Hobbs may institute any appropriate action or proceedings to:

1. Prevent such unlawful placement, location, erection, conversion, maintenance or use;
2. Restrain, correct or abate the violation;
3. Prevent the occupancy of such mobile home, structure or land; or
4. Prevent any illegal act, conduct, business or use in or about such premises.

B. *Revocation of Certificate of Occupancy if Violations Occur* - The City Building Official is empowered to revoke any manufactured housing placement permit (similar to certificate of occupancy) if repeated violations of this chapter occur at any dwelling unit or mobile home or recreational park.

C. *Abandoned or Unsafe Mobile Homes* - Removal by City. The City is empowered through condemnation powers to remove and abate any abandoned or unsafe mobile homes, recreational vehicles or manufactured housing.

D. *Annexation Waiver* - Following the effective date of any annexation of new territory into the City limits of Hobbs, a waiver and abatement of the provisions of this chapter is granted to any existing mobile home, existing mobile home park and/or existing recreational vehicle park located within the annexation area for a period of five (5) years following the effective date of annexation. This waiver applies to only to new annexations after the effective date of this chapter.

E. Any person who violates any provision of this chapter shall be found guilty of a misdemeanor, and upon conviction in the Municipal Court of the City of Hobbs shall be punished by a fine of not less than two hundred fifty dollars

($250.00) or more than five hundred dollars ($500.00) for a first or subsequent offense and by imprisonment for not more than ninety (90) days, or both, for a second or subsequent offense.

(Ord. No. 980, § 1D(12), 3-17-2008)

Chapter 18.08 RURAL AND OPEN SPACE PLANNING DISTRICTS

18.08.010 Purpose and intent of Rural and Open Space Planning District.

This section specifies the purpose and intent of the new proposal, which is intended to have the purpose of implementing the City's adopted Comprehensive Plan.

1. The Rural and Open Space Planning District concept is established to allow for the maintenance of rural or agricultural land in such use or in anticipation of the eventual transition of agricultural or undeveloped land to residential or other urban uses. Property in this district should include existing large lots, unplatted tracts of land, and areas where adequate public facilities are not available or desired to support higher density urban or suburban development.

2. An additional purpose of the Rural and Open Space District is to allow for single-family residential uses in areas where agriculture, ranching and/or horse stable operations or the maintenance of large or small livestock remains or are allowed as an accessory land use. The number of animals is limited to ensure nuisances are not created for the district's residents or those in nearby districts.

3. The district is established to allow for areas of relatively low density residential use and associated uses. All parcels and areas may or may not be served by urban infrastructure due to lack of utilities and public service constraints. Retention of rural to semi-rural character is a primary objective.

4. Applications for designation of property to be classified as a Rural and Open Space Planning District shall be submitted to the Planning Department and be reviewed and considered for approval by the Planning Board, as specified herein.

(Ord. No. 1018, Amd. 1(A), 9-21-2009)

18.08.020 Rural and Open Space Planning District standards.

1. Standards for Parcel Size and Minimum Size of Districts.

a. The minimum size of a Rural and Open Space Planning District shall be 5.0 acres.

b. The minimum size of a parcel containing livestock within a Rural and Open Space Planning District shall be 0.50 acres for keeping of poultry or rabbits; 0.75 acres for keeping of small livestock; and 1.25 acres for keeping of large animals or large livestock.

c. No livestock shall be kept less than one hundred (100) feet from any private residence, except for the owner keeping the livestock, which may not be located within fifty (50) feet of a livestock pen or enclosure.

d. Keeping of such animals shall not be permitted in the required front, side and street side yard setbacks.

e. No covered animal shelter, pen or enclosure shall be permitted less than one hundred (100) feet from any water well for domestic use.

2. Permits for Livestock.

a. Except in a horse racetrack area as permitted by Section 6.08.010 of the Hobbs Municipal Code (HMC), no person shall keep any livestock within the city limits unless the property is located within a Rural and Open Space Planning District, as approved by the Hobbs Planning Board, and without a permit provided herein in this section.

b. No person shall keep any livestock within the city in violation of the provisions of this title. All of the real property subject to a permit application proposed to contain livestock must be within the boundary of an approved Rural and Open Space Planning District.

c. Application for all permits required in this section shall be made in writing to the City Environmental Division to be accompanied by a payment of the adopted fee for one (1) or more livestock. The application shall state the name and residence of the applicant, the location of the premises where such livestock are to be kept, the acreage and square footage of the area in which they are confined, the number of such livestock, and the kind of enclosure within which they are to be kept. A property map shall be included

with locations and dimensions of pastures, stockyard, corrals, stables, barns, watering and feeding areas and fencing plans. The application shall be made and signed by the real property owner.

d. Permits will be reviewed by the Environmental Division, and other City functions including Planning, Engineering, Inspections and others as necessary to determine compliance with these regulations.

e. Permit fees will be approved by resolution of the City Commission and assessed to all applications for: 1) new applications; 2) annual renewal permits; 3) amended permits for a new owner or change in operations; or 4) for repeat inspections, violations, inspections ordered by the City involving veterinary professionals, or other enforcement actions.

f. The permit shall be renewed annually in the same month in which it was issued of the previous year upon written application and payment of the annual maintenance fee to maintain the license. If the ownership of the premises upon which the livestock is kept is changed, the permit must be amended with a new application and payment of a required fee for amending the permit.

g. The permit may include reasonable conditions, including total number of livestock authorized as determined by the Environmental Division officer to prevent a nuisance. All conditions of a permit are subject to review and revision.

h. After reasonable notice and opportunity to be heard, the Environmental Superintendent may suspend or revoke the permit for violation of any provisions of this chapter by the permit holder or his agent or employee, or if conditions arise which could justify denying the permit on an original application. The Environmental Superintendent may review and alter conditions or restrictions of the permit if investigation indicates any changes since the original application. Notice of a permit suspension or revocation must be delivered in person or in writing to the permit holder. A determination of suspension or revocation of a permit issued under this section may be appealed to the city manager in accordance with the procedures established municipal code procedures.

i. Pigs. Except as referenced in Section 6.06.030 of this code, no person shall keep any hog, sow or pig within the city limits except for the keeping of Vietnamese pot-bellied pigs maintained as household pets.

j. Exotic Livestock Animals. Exotic livestock animals are not permitted in Rural and Open Space Planning Districts, unless permitted in [Chapter] 6.06 of this code.

3. Livestock Classifications.

a. Large Livestock Animals or Large Animals. The large animals classification includes all horses, all cattle, buffalo, donkeys, burros, mules, llama, alpaca, and ostrich and other similar sized livestock animals.

b. Small Livestock Animals or Small Animals. The small livestock or small livestock animals classification includes all goats, all sheep, emus, rheas, and other similar sized livestock animals.

c. Rabbits, Poultry and/or Fowl, and Similar Size Animals. The poultry and rabbits animal group classification includes all poultry and fowl including chickens, ducks, geese, turkeys, peacocks, guinea fowl, game fowl, pheasants; all varieties of rabbits; homing pigeons; and other similar sized farm animals which would normally be kept within secure fencing or caged environments.

4. Land Area Density Standards for Livestock. The land area available for livestock pasture or stockyard should be sufficient to prevent any nuisances associated with the keeping of livestock. The property owner must be able to properly maintained the land and buildings associated with keeping of large animals. Pasture or yard area must be devoted solely to the use of the livestock and must be fully fenced and maintained with the animals to have ready access.

Minimum densities of livestock per area are specified in the following tables. Requirements are grouped according to large animals (horses, cattle, donkeys, etc.); small livestock (goats, sheep, emus, etc.); and poultry, rabbits, etc.

Minimum Land Density—Large Animals

Number of Large Animals	Minimum Size of Lot or Tract (acres)	Minimum Size of Pasture or Yard Area (acres)
1	1.00	0.75
2	1.75	1.50
3	2.50	2.25
4	3.50	3.00
5	4.50	4.00

If more than five (5), the permitting staff will review the proposal and arrive at a satisfactory density with the property owner.

Minimum Land Density—Small Animals (Small Livestock)

Number of Small Animals	Minimum Size of Lot or Tract (acres)	Minimum Size of Pasture or Yard Area (acres)
1—2	1.00	0.60
3—5	1.75	1.25
6—8	2.75	2.25
9—12	4.00	3.50
12—15	5.50	5.00

If more than fifteen (15), the permitting staff will review the proposal and arrive at a satisfactory density with the property owner.

Minimum Land Density—Poultry and Rabbits

Type of Fowl or Animals	Maximum Number per each 10,000 Square Feet of Pasture or Yard Area (Square Feet)
Free range chickens	40
Isolated chickens	20
Ducks—Free range	15
Geese and turkeys—Free range	8
Rabbits—In cages	15
Homing pigeons	(per staff review)

If different species are requested to be permitted, the permitting staff will review the proposal and arrive at a satisfactory density with the property owner.

The minimum size lot or parcel to keep poultry or rabbits shall be 0.5 acres. The minimum yard area for poultry is ten thousand (10,000) square feet. If land area is greater than 1.0 acres, the permitting staff will review the proposal and arrive at a satisfactory density with the property owner.

5. General Requirements for Keeping Animals—Pens and Enclosures—Sanitation Requirements. The following provisions in this section are exclusively established for the keeping of animals in Rural and Open Space Planning Districts after the effective date of the special use permit.

A. All livestock shall be kept in a secure pen or enclosure, which shall not be less than one hundred (100) feet from any private residence (except that of the owner or person keeping such animals) or any hotel, apartment house, tenement house, hospital, church or school.

B. Fowl and rabbits subject to permitting shall be kept in a secure pen or enclosure that is at least thirty (30) feet from any private residence (except that of the owner or person keeping such fowl or rabbits) or any hotel, apartment house, tenement house, hospital, church or school; provided, the pen or enclosure may be within twenty (20) feet of such buildings if separated therefrom by a public alley and by a solid fence or wall at least six (6) feet high between the pen or enclosure and the alley. In conjunction with issuance of a permit, the veterinary officer may waive the requirements as to distance from dwellings or other buildings if public health is not endangered nor a nuisance is created.

C. All persons keeping permit animals shall comply with the following regulations:

1. Manure shall be removed from pens, stables, yards, cages and other enclosures at least twice weekly and handled or disposed of in such a manner as to keep the premises free of any nuisance.

2. Mound storage of manure between such removals shall be permitted only under such conditions as to protect against the breeding of flies.

3. The feeding of cooked or uncooked vegetables, cooked meat scraps or cooked garbage shall be done only in impervious containers or on an impervious platform. The feeding of uncooked meat scraps or garbage is prohibited.

4. Watering troughs or tanks shall be provided which shall be equipped with adequate facilities for draining the overflow, as to prevent the breeding of flies, mosquitoes or other insects.

5. No material subject to putrefaction shall be allowed to accumulate on the premises, including unconsumed feed materials and they shall be removed and disposed of by means approved by the Environmental Officer.

6. All permit animals shall be kept in compliance with all regulations and provisions of the health, environmental and sanitation ordinances of the City of Hobbs.

7. Keeping of equine and bovine animals and small animals.

   a. Except in a Horse Racetrack district, no person shall keep an equine or bovine on any premises the overall area of which is less

than one-half (1/2) of an acre for each equine or bovine kept, nor keep more equines or bovines than can be cared for under sanitary conditions to prevent a public nuisance.

b. Young off-spring (foals, calves, lambs or kids) up to six (6) months of age are considered as one (1) animal unit when combined with the adult animal.

c. The persons in lawful possession of the premises, as owner or tenant, may keep thereon equine or bovine belonging to others, but limited to number of animals on the premises and the area and distance requirements of this section.

8. Substantial and acceptable locking or latching devices shall be provided and installed on all gates and doors to large animals for the prevention of animal escape and unauthorized entry by small children. All animals shall be provided with adequate enclosures to contain them within the boundary of the owner's property.

9. All stalls and corrals shall be continuously maintained with preservative, fasteners, and other materials so as to maintain appearance and prevent deterioration and animal escape.

10. Feeding facilities and/or boxes shall be provided in each corral and/or box stall located in such a manner so as to be maintained aboveground and to prevent spoilage, also such facilities shall be maintained accessible to animals to be served thereby.

11. All areas adjacent to any pen, coop, stable, stall, barn, corral, grazing or work-out or training areas, or other building structures and areas where animals are kept and maintained, shall be graded to drain away from such facilities so as to prevent ponding, and insect harborage.

12. All areas used as arenas for exercising, training, or exhibition of animals shall be continuously maintained in a dust-free manner at all times by dampening with an approved sprinkler system or other acceptable means for the prevention of detrimental and nuisance affects of dust emission to surrounding properties.

13. Commercial stables, kennels, and veterinarians are exempted from the terms of this section, except they must comply with the health, sanitation, and nuisance regulations, as listed in the Municipal Ordinances.

14. The keeping and maintenance of any type of animals, as referenced in this section, shall comply with all regulations and provisions of the health and sanitation laws of the City, without exception. All premises and facilities upon which animals, poultry, or fowl are permitted to be kept shall be maintained in a clean, orderly, and sanitary condition at all times as to not constitute a nuisance, through violation of the following regulations:

    a. Offensive noise, odor, or dust shall be effectively controlled;

    b. Areas devoted to livestock and poultry, including accessory buildings or structures, shall be constructed and maintained to discourage concentration and breeding of insect pests;

    c. All animals shall be confined within the owner's property.

15. The Environmental Superintendent shall have the duty and authority to investigate upon probable cause, any alleged violation of these standards or of any law of the State of New Mexico relating to the care, treatment, control and prevention of cruelty to animals.

    a. Environmental Officers are authorized to inspect premises as necessary to perform their duties. If the owner or occupant of the premises objects to inspection, a warrant shall be obtained from a court of competent jurisdiction prior to inspection. No warrant shall be necessary if probable cause exists to believe that there is an emergency requiring such inspection or investigation.

    b. Whenever an Environmental Officer has probable cause to believe that a person has violated these standards, the officer may prepare a citation for the alleged violator to appear in court. The citation shall contain the name, address and telephone number, if known, of the person violating this chapter, the driver's license number of such violator, if known, the code section allegedly violated, and the date and place when and where such person allegedly committed the violation, and the location where such person shall appear in court and the deadline for appearance. The officer shall present the citation to the person he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign a copy of the citation.

D. Fencing Requirements.

1. Corral Size. Every corral to be provided shall have a minimum dimension of not less than fifty (50) feet and shall contain not less than two thousand five hundred (2,500) square feet of area.

2. Box Stall. Every box stall to be provided shall have a minimum of twelve (12) feet of length and width.

3. Water Facilities. Running water facilities shall be provided within fifty (50) feet of each stall and/or corral, and each animal shall have access to fresh water.

4. Fencing. Fencing to be provided shall be subject to the following:

a. Materials and Construction. Fencing may be constructed of wood, chain link, masonry, metal, and materials with the structural strength required by the Uniform Building Code.

b. Fence Posts. Fence posts may be constructed of wood, metal, concrete, or materials with the structural strength required by the Uniform Building Code.

c. Fence Height. Fences to be provided for enclosure shall be maintained not less than four and one-half ($4^1/_2$) feet in height. For use in conjunction with stud stalls, such fence shall be maintained not less than six (6) feet in height.

(Ord. No. 1018, Amd. 1(B), 9-21-2009)

18.08.030 Special use permit approval procedures for Rural and Open Space Planning District.

1. Special Use Permit Approval Process For Approval of a Rural and Open Space Planning District within the corporate boundaries of the city of Hobbs. An application for a Rural and Open Space Planning District may be initiated by a property owner(s) filing a complete application with the Planning Division in a form established by the City. The application shall include the following information:

Name, address and telephone number of each applicant and owner;

Legal description of the property that is the subject of the proposed Rural and Open Space Planning District;

A statement of the reasons why the Rural and Open Space Planning District is being requested; and

Other information or documentation necessary to process the application, as required by the Planning Division.

The property owner, or owners, must sign the application for the special use permit - Rural and Open Space Planning District. Compliance with such information is necessary to place the application on the Planning Board agenda. The City Planning Division or Planning Board may require an applicant for map amendments to submit such technical studies as may be necessary to enable the proper evaluation of the application. Required studies may include, but are not limited to, environmental studies, traffic studies, engineering studies, noise studies or neighborhood and/or economic impact reports.

2. Planning Board Review—Public Hearing and Decision Making Process. The Planning Board shall, after due notice herein, conduct a public hearing on the proposed rural district. At the public hearing the Planning Board shall consider the application, the relevant supporting materials, and all comments and written materials submitted by the public at the public hearing.

The Planning Board may give consideration to the following criteria, to the extent pertinent to the application. In addition, other factors may be considered which may be relevant to the application. Conformance of the proposed Rural and Open Space Planning District with the City's land use policies as contained in the adopted Comprehensive Plan. The character of the proposed Rural and Open Space Planning District as it relates to the surrounding neighborhoods, compatibility of a Rural and Open Space Planning District to the surrounding areas and properties. The extent to which the proposed use would affect the capacity or safety of that portion of the street network, other public facilities or utilities, or potential environmental problems in the vicinity of the property, and the extent to which approval of the application would diminish the character of the surrounding neighborhoods.

3. If approved, the Planning Board must find that the Rural and Open Space Planning District must foster implementation of the City's adopted Comprehensive Plan; or the area of the proposed change is different from surrounding land because it could function as a transition between adjacent neighborhood areas.

4. After the public hearing, the Planning Board shall adopt and transmit a final decision report to the applicant. The concurring vote of a simple majority of all current members of the Planning Board (four (4) of six (6) members) is necessary to approve any Rural and Open Space Planning District. The decision report for applications denied by the Planning Board shall state the reasons why the Planning Board denied the application. The decision of the Planning Board is final unless the

applicant files an official written appeal to the City Commission. A re-application for a Rural and Open Space Planning District request on the same property may not be considered within two (2) years of the date of final action on the prior application.

5. Public Notice of Proposed Actions. Public notice of hearings held before the Planning Board, unless otherwise required by law, shall be given as provided in this section.

a. Published General Notice. On or before the fifteenth day before the date of any public hearing involving the establishment or amendment of any district boundary, consideration of a special use permit, or a proposed variance from any planning regulation, the Planning Division shall publish in the local newspaper of general circulation in the City of Hobbs a public notice stating the date, time and place of the public hearing at which all parties in interest and citizens shall have an opportunity to be heard. The notice shall include a short description of the proposed action, the subject property and how additional information can be obtained.

b. Mailed Notices. Whenever a planning district map amendment special use permit is proposed for an area, the Planning Division shall mail notice of the public hearing by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a special use permit and to all other owners within the greater of two hundred (200) feet of the subject area, or one hundred (100) feet, excluding public right-of-way, of the subject area. The mailing shall be posted on or before the fifteenth day before the date of the public hearing.

c. Posting of Notice Signs. Public notice of required public hearings on property owner applications for a Rural and Open Space Planning District special use permit application shall also be provided by way of a sign posted at least ten (10) days before the date of the public hearing on the property that is the subject of the application. One (1) sign shall be posted by the Planning Division for each five hundred (500) feet of frontage along a public street, with a maximum of three (3) signs required per frontage. Signs shall be located so that each sign is clearly visible from the street, or visible from the nearest public street.

d. The City may charge a reasonable fee to cover the cost of the required mailing.

(Ord. No. 1018, Amd. 1(C), 9-21-2009)

18.08.040 Special conditions, exceptions and enforcement.

1. All parcels, lots, tracts and property containing livestock or poultry, existing prior to this title but later included within a newly created Rural and Open Space Planning District shall have a three-year period in which to comply with these standards. Except that any variation or deficiency relating to unsafe practices, nuisances, odors, unsanitary conditions or overcrowding of animals shall not be permitted after the passage of this title.

2. All recently annexed parcels, lots, tracts and real property, or specifically those lands annexed within the ten-year period prior to adoption of this title, which lands contained livestock existing prior to the annexation by the City, if any, are automatically included within a Rural and Open Space Planning District as defined herein. All standards from this existing standard for Rural and Open Space Planning Districts are now applicable to any such areas created during recent annexations.

3. Enforcement and Implementation.

a. The City of Hobbs shall have the authority to enforce the requirements and standards of this title pursuant to Section 3-21-10, NMSA 1978. The City of Hobbs intends to vigorously enforce this title. If any violation of this title occurs, the City shall take action forthwith including but not limited to permit revocation, penalties, forced removal of animals from a property, and to come on to the property to clean up or properly remediate a violation. The City may take action to restrain, correct or abate the violation; to prevent the keeping of animals in a manner which violates this title; and to prevent any illegal act, conduct, business or use in or about such premises.

(Ord. No. 1018, Amd. 1(D), 9-21-2009)

18.08.050 Violations.

Any person who violates any provision of this chapter shall be found guilty of a misdemeanor, and upon conviction in the Municipal Court of the City of Hobbs shall be punished by a fine of not less than five hundred dollars ($500.00) or more than one thousand dollars ($1,000.00) for a first or subsequent offense and by imprisonment for not more than ninety (90) days, or both, for a second or subsequent offense.

(Ord. No. 1018, Amd. 1(E), 9-21-2009)

Chapter 18.12 TOWER REGULATION ORDINANCE

18.12.010 Purpose.

A. The purpose of this chapter is to establish general guidelines for the location of wireless communication towers and antennas and other privately owned towers including small wind energy towers. The goals of this chapter are as follows:

1. To guide the orderly growth and development of Hobbs in accordance with the City of Hobbs Comprehensive Plan in order to protect health, safety and general welfare of current and future inhabitants of the City of Hobbs, New Mexico, and, in particular, to protect their interests from adverse impacts of land use including to protect the City's residential areas from the haphazard, disorganized and indiscriminate location throughout the City of wireless communication towers, as defined in NMSA 3-21-1 et seq.

2. Protect residential areas and land uses from potential adverse impacts of towers and antennas, and encourage the location of towers in non-residential areas;

3. Minimize the total number of towers throughout the community, and to strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;

4. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

5. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, location, landscape screening, and innovative camouflaging techniques;

6. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

7. Avoid potential damage to adjacent properties from tower failure through ensuring proper engineering and careful location of tower structures. In furtherance of these goals, the City of Hobbs shall give due consideration to the Hobbs Comprehensive Master Plan and attachments for Major Thoroughfare Plan and Urban Growth Plan, all other appropriate development policies and regulations of the City, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

8. Provide regulations which provide reasonable regulations for the location, construction and design of towers containing wind turbines and other related towers.

(Ord. No. 1036, § 1, 9-20-2010)

18.12.020 Definitions.

As used in this chapter, the following words and terms shall have the meanings ascribed below, unless the context of their usage clearly indicates another meaning:

Alteration means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.

Amateur Radio Antenna means an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial antennas.

Antenna means a device or system of wires, poles, rods, dishes, discs or similar devices used for the transmission and/or receipt of electromagnetic waves.

Beautification Corridor means those arterial and collector street corridors as referred to herein and in the Hobbs Landscape Ordinance, as amended in the future, and further defined as arterial streets with an eight hundred (800) feet width beautification corridor, which include West County Road, Grimes Street, Turner Street north from Main to Bender, Dal Paso Street, Lovington Highway, Marland Boulevard, Broadway, Sanger Street east from Tasker, Bender Boulevard, Joe Harvey Boulevard, Navajo Drive, and Business Park Boulevard; and collector streets with a four hundred (400) feet width beautification corridor, which include Fowler Street north from Bender to City Limits, Jefferson Street north from Sanger north to City Limits, Harden Boulevard, Glorietta Drive east from Fowler to City Limits, Millen Drive, College Lane, Magnolia Street and intersecting streets, Calle Grande Street, Calle Sur Street, A Street, Jack Gomez Boulevard, Ranchland Drive, and Homestead Drive. Each beautification corridor is centered on the center of the street right-of-way.

Board means the Hobbs Planning Board.

Camouflage Design or *Camouflage Tower* means the design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted antenna/array/equipment, building-mounted antenna/array/equipment that

is designed and treated as an architectural element to blend with the existing building, designs that conceal the antenna/array/equipment, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

Commission means the Hobbs City Commission.

Department means the Planning Department of the City of Hobbs.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Grade means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and a line five (5) feet from the building or structure.

Height of the Building means the vertical distance above the grade of the building as measured to the highest point of the roof of a building.

Height of the Tower means the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, including the antenna, if any.

Historic District means a district so designated by the State of New Mexico or City of Hobbs, or an area for which an application for designation has been initiated thereunder and has not been disapproved by city commission.

Occupied Structure means a building or structure that is permanently occupied by human beings and designed and used primarily for commerce, industry, working, recreation or other indoor activities, but is not intended for residential occupancy.

Park means any property of the state or political subdivision thereof that is designated for and restricted to use by the public for park purposes.

Planning Department means the Planning Division of the City of Hobbs, New Mexico.

Public Gathering Area means those areas of the city where the general public gathers, such as public education or recreation areas and shopping areas.

Public Utility means any person, company, corporation, cooperative corporation, partnership, or any combination thereof, that is subject to and has received a municipal franchise agreement and/or an approved assignment of a franchise agreement with the City of Hobbs; and/or the comprehensive regulatory system established by and defined by the New Mexico Public Regulation Commission.

The term "public utility" shall not include telegraph services, wireless communication services, television stations, radio stations, community antenna television services, general radio-telephone services, or radio-telephone services authorized under the Public Mobile Radio Services rules of the Federal Communications Commission or private water companies. Organizations with field operations using towers must comply with laws and rules pertaining to their particular operations.

Residence means any permanent building or structure containing habitable rooms for non-transient occupancy, designed and used primarily for living, sleeping, cooking and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not attached, including homes, town homes, patio-homes, duplexes, condominiums, mobile homes, manufactured housing and apartments. For purposes of calculating the ratio of multi-unit complex acreage to residential tracts, only that portion of the multi-unit complex acreage within the residential test area shall be considered. Hotels, motels, boarding houses, group homes, half way houses, nursing homes, hospitals, nursery schools, schools, and child care facilities are considered residences by this chapter.

Residential or *Residential Lot* means pertaining to the use of land for a residence as is defined in this section, or a lot which is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions; or an unrestricted lot upon which a residence exists.

Residential Restrictions means one or more restrictive covenants limiting the use of the property to residential purposes that are contained or incorporated by reference in a properly recorded plat, deed or other instrument filed in the Lea County Clerk's records.

Residential Area means the area around a proposed tower site that, within the residential test area, contains forty percent or more tracts wholly or partially therein that is subject to residential use or restrictions or is in use for residential purposes.

Residential Test Area means the circular area, as described herein, surrounding a proposed tower structure. The radius of the circle shall be at least two hundred (200) feet and not more than six hundred (600) feet, and the center of the circular area shall correspond to the center of the base of the proposed tower structure. The radius of the circular area shall conform to the following ratios:

Two hundred (200) feet radius at a tower height of fifty (50) feet or less;

Four hundred (400) feet radius at a tower height in excess of fifty (50) feet but less than one hundred (100) feet;

Five hundred (500) feet radius at a tower height in excess of one hundred (100) feet but less than one hundred fifty (150) feet; and

Six hundred (600) feet radius at a tower height in excess of one hundred fifty (150) feet.

Setback Area means the circular area surrounding a proposed tower structure and which delineates the area between the site of the proposed tower and the nearest residential structure or residential restricted tract of land.

Small Wind Energy Tower (SWET) means a tower containing a wind turbine and associated control or conversion electronics, which has a rated capacity of not more than one hundred (100) kilowatts (kW) and which is intended to primarily reduce the on-site consumption of utility power.

Subdivision means all land encompassed within one (1) or more maps or plats of land within the city that is divided into two (2) or more parts and are recorded in the deed, map or real property records of the county or counties in which the land covered by the map or plat is located.

Tower or *Tower Structure* means a fixed, freestanding or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. This definition includes, but is not limited to, any such structure supporting antennae that transmit or receive any portion of the electromagnetic spectrum of radio waves. The following are, by way of example but not limitation, towers or tower structures: guyed or freestanding monopole structures, lattice or open framed structures, antennae supports, water towers, and other similar self-supporting, trussed, or open framed structures. A tower also means any tower or structure constructed on private property to receive solar energy or for any other commercial or private purpose.

Tower Parcel or *Tower Site* means a contiguous parcel of property where a tower is located or proposed to be located.
(Ord. No. 1036, § 2, 9-20-2010)

18.12.030 Tower permit required.

A. Prior to filing an application for a City building permit, an application for a tower permit shall be submitted to the Planning Department and reviewed and considered for approval in accordance with the provisions of this chapter prior to the construc-

tion, placement or alteration of any tower or tower structure, as defined in this chapter and not specifically excluded herein, that is located within the boundaries of the municipality.

B. A tower permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension and any tower repaired, replaced or modified in order to comply with the requirements of any statute, regulation, order, or rule of the FCC, the FAA, or any other federal, state or governmental agency or authority.

C. Notwithstanding any other provision of this chapter, the owner of an antenna tower for which a tower permit and building permit was issued prior to July 1, 2010, and after January 1, 2009, may, without obtaining a new permit, upon written notice to the City Planner, replace the tower with a new tower if the new tower structure complies with the requirements of this chapter and: (i) is specifically designed to accommodate additional antenna arrays, (ii) is not more than twenty (20) feet higher than the tower structure being replaced, (iii) is not more than fifty (50) feet from the location of the tower structure being replaced and (iv) the center of the tower structure is no closer to the nearest residence than the center of the tower structure it replaces. A tower structure may be replaced only once under this subsection.
(Ord. No. 1036, § 3, 9-20-2010)

18.12.040 Exemptions.

A. This chapter does not apply to the following structures:

1. Church bell towers and religious symbols associated with a place of worship;

2. Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility for rendering its service, such as tower structures used primarily for the transmission of electrical power by a public utility or the conveyance of communications over a telephone wire-line system operated by a public utility;

3. Tower structures constructed or placed on land or other structures owned, leased, held or dedicated for use by the state or federal government or any political subdivision thereof, which land or other structures are used by the governmental entity primarily for rendering fire, police or other public protection services or utility services, whether or not the tower structure is used jointly by the governmental entity and any other public or private person or entity for other and additional public or private purposes; and

4. Temporary tower structures used in conjunction with construction such as cranes, and all temporary oil and gas drilling rigs for new or existing wells.

5. Tower structures less than one hundred fifty (150) feet in height located at least six hundred (600) feet from the nearest residence on industrial property that is securely fenced and used exclusively for the private communication use of the industry owning the land and operating the business, such as for an oil and gas operating company. The tower must have a minimum setback from all property lines of two hundred (200) feet. All oil and gas industrial facilities such as material storage silos are exempted.

B. *Exemption Certificate.* An exemption certificate must be issued for all towers in excess of thirty (30) feet that are exempted from this chapter. The Planning Department must be contacted, with specific information to be provided in order to receive the certificate. There is no fee for an exemption certificate.
(Ord. No. 1036, § 4, 9-20-2010)

18.12.050 Location of towers.

A. A tower permit shall not be approved for the construction of a tower on a lot, tract or parcel of land where the construction of a tower is prohibited, expressed or implied, by duly recorded deed restrictions or covenants running with the land.

B. In a residential area, a tower permit shall not be approved for the construction or alteration of a tower structure.

C. A tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower structure is located a distance at least equal to the applicable setback area established by [subsection F.] below.

D. In an historic district, and in an area within five hundred (500) feet of an historic district, a tower permit shall not be approved for the construction or alteration of a tower structure.

E. A tower permit shall not be issued for the construction or alteration of a tower structure in a public gathering area or within one hundred (100) feet of such an area. A tower permit shall not be issued for the construction or alteration of a tower structure in a park or on a tract surrounded by a park, or within one hundred (100) feet of a park boundary.

F. A tower permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of a tower to all property boundaries is at least one hundred ten (110) percent of the height of the

tower or tower structure, whichever is greater. The foregoing measurement shall be made to the nearest point on each property line within the setback area. For all tower parcels, the tower must be designed so that it cannot fall on any contiguous property.

G. If a survey is provided by the applicant for residential lots, the measurement shall instead be made as follows:

1. If a residence has been constructed on the lot, the measurement shall be from the tower structure to the nearest outside wall of the residential structure on each lot; or

2. If a residence has not been constructed on the lot, the measurement shall be from the tower structure to the center of the residential lot minus twenty-five (25) feet.

H. A tower permit shall not be approved for the construction or alteration of a tower structure within two thousand (2,000) feet of any other previously approved or permitted tower structure, other than a tower structure for which a permit would not be required under this chapter. For purposes of this requirement, a tower is considered to be "approved" when a tower permit or a City building permit has been issued pursuant to this chapter and the tower structure has been constructed or any building permit issued thereunder remains in effect. The Planning Department shall develop rules and procedures for establishing precedent to the extent of conflict between two (2) or more tower structures.

I. Property uses and distances referred to in this section shall be determined as of the date and time that the completed tower permit application is filed.

J. *Availability of Suitable Towers, Other Structures, or Alternative Technology.* No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Board that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other structures or alternative technology. Substantial evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

7. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

(Ord. No. 1036, § 5, 9-20-2010)

18.12.060 Tower structure.

A. Each antenna tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the placement of a minimum of two antenna arrays. This requirement shall not apply to a camouflage tower.

B. Towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
4. If any tower is located within a beautification corridor as defined herein, the tower shall be required to be designed and constructed with camouflage design or as a camouflage tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted or building mounted antenna/array/equipment, or designed and treated as an architectural element to blend with the existing building, designs that conceal the antenna, array and equipment, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

C. Each tower structure for which a permit is approved and issued shall be designed, engineered and constructed to include appropriate lightning conductors and grounding connection to minimize the dangers from lightning, as approved by the New Mexico State Electrical Inspector.
(Ord. No. 1036, § 6, 9-20-2010)

18.12.070 Fencing requirements.

A. *Security Fence.*

1. The base of a tower shall be completely enclosed by a fence, wall, or barrier which limits climbing access to the tower and any supporting systems, lines, wires, buildings or other structures.
2. The fence, wall or barrier required by [this subsection] shall not be less than eight (8) feet in height with no openings, holes or gaps larger than four (4) inches measured in any direction. Gates and doors opening directly into the area enclosed by a fence, wall or barrier, as required by this section, shall be equipped with a lock to keep the doors or gates securely closed and locked at all times. Tower sites located within industrial yard areas with existing secure fencing of the entire yard may construct secure fencing six (6) feet in height.
3. The requirements of this section do not apply to:
    a. Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower, or

b. Existing tower sites having existing adequate security fences at least six (6) feet in height.

B. *Screening Fence.*

1. The base of a tower, including all mechanical equipment and accessory structures, shall be screened from view of residential lots by an opaque screening fence designed to meet minimum standards of the City Screening, Buffering and Lighting Policy and built to provide privacy with a minimum height of eight (8) feet.

2. The screening fence may contain gates or doors allowing access to the tower and accessory structures for maintenance purposes, which shall be kept completely closed except for maintenance purposes and shall be located a minimum of eighteen (18) feet from the public right-of-way.

3. The screening fence requirement of this section does not apply to:

   a. Any tower constructed or placed a distance of more than three hundred (300) feet from all residential lots, or any tower within an industrial yard; or

   b. Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower; or

   c. Any tower located more than fifty (50) feet from a public street right-of-way, unless within a beautification corridor.

C. When both sections above regarding a security fence and a screening fence are applicable, a single fence conforming to all applicable requirements of both sections may be provided.
(Ord. No. 1036, § 7, 9-20-2010)

18.12.080 Landscaping.

A tower site is not required to have landscaping unless the tower site is located within fifty (50) feet of any City street, unless within a beautification corridor. Towers located on public alleys are exempt unless the location is within fifty (50) feet of a public street, unless within a beautification corridor. If required, the landscaping shall comply with City landscaping standards as determined by the Planning Department.
(Ord. No. 1036, § 8, 9-20-2010)

18.12.090 Signs and lighting.

A. No signs shall be allowed on an antenna or tower. Lettering, signs, symbols, images or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent roadway shall not be placed on or affixed to any part of a tower, antenna array or antenna, other than as required by FCC regulations regarding tower registration or other applicable law.

B. A tower or tower structure shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required by law or regulation, a design that reasonably complies with the City Screening, Buffering and Lighting Policy and minimizes disturbance to any adjacent residence(s) or public building shall be utilized.
(Ord. No. 1036, § 9, 9-20-2010)

18.12.100 Application procedures for a tower permit.

A. An application for a tower permit shall be submitted to the Planning Department in the time and manner prescribed by the City Planner. The applicant shall, with the filing of the completed tower permit application, submit payment of the appropriate tower permit fees established by the City Commission that are calculated to reasonably cover the expenses of administering the provisions of this chapter.

B. The application shall not be considered complete unless accompanied by any and all drawings, building plans, if available, descriptive data, information on the height, structure, and appearance of the tower, filing fees, ownership and/or lease information, site map showing legal boundary, tower location and street access, all applicable restrictive covenants and other pertinent data that may be required by the City Planner. Each application for a tower permit or for a waiver shall include a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within the residential test area of the proposed tower site. The application must be signed by both the tower owner or applicant and the real property owner.

C. In the event that any of the required documentation, data, reports or drawings contains any false or erroneous information known to the applicant, then any permit issued pursuant to that false or erroneous information shall be void with the same force and effect as if it had never been issued.

D. An application for a tower permit shall not be approved for a tower that is not in conformance with the regulations prescribed in this chapter unless a written application for a variance has been submitted to and approved by the City.

E. The City Planner shall issue a tower permit for location, placement or siting of a tower only if it meets the requirements of this chapter.

F. On or before the 40th calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or preliminary approval of the tower permit. Any notice of disapproval of a tower permit application must include a written report explaining in detail the reasons for disapproval. Any preliminary approval shall be subject to the protest provisions of this section, and, if no protest is timely filed thereunder, shall become a final approval on the [next] business day following the close of the protest period. The issuance of a written notice to the applicant shall be complete upon the deposit of the properly addressed notice in the United States mail, first class postage paid.
(Ord. No. 1036, § 10, 9-20-2010)

18.12.110 Tower permit issuance and indemnification.

In accepting a tower permit, permittee is required to agree to and shall indemnify, defend and hold the City, the City Commission of the City of Hobbs, its individual Commissioners, its officers, employees and agents harmless from any and all causes of action, suits, claims, judgments, losses, costs, expenses, and liens of every kind and nature, including but not limited to court costs and attorney's fees, arising or alleged to have arisen out of permittee's performance in construction and operation of the tower, permittee's negligent actions, provision of services or failure to render services, or any violation of this chapter by permittee of the approved tower permit.
(Ord. No. 1036, § 11, 9-20-2010)

18.12.120 Notification procedures.

A. The notice requirements of this section apply only to applications for tower permits for the construction, placement or alteration of towers subject to the requirements of this chapter and for variances from the requirements of this chapter.

B. When an application for variance is not filed as part of the original application for a tower permit, the notice requirements of this section apply separately to the variance application.

C. The applicant shall post and maintain adequate notice sign(s) on the subject tower site and on street accesses leading to the tower site for a minimum of thirty (30) calendar days beginning no later than the sixth calendar day following the date of the filing of the required completed application with the department. Sign(s) shall be posted no more than fifteen (15) feet from the public right-of-way that is used as access to the tower site. The sign shall face each public right-of-way bordering the tower site and the lettering on the sign shall be legible from the public right-of-way. Each sign shall be a minimum of four (4) by four (4) feet in size, with lettering that complies with specifications promulgated by the Planning Department. The sign locations shall be approved by the Planning Department prior to erecting the signs.

1. The sign shall contain at a minimum the items of information including the proposed site of a tower; proposed maximum height above grade of the proposed tower; applicant information, contact information where additional information concerning this project may be obtained, and the date of the public hearing of the Planning Board to consider the variance.

2. If, in the opinion of the City Planner, compliance with the requirements of this section is insufficient to provide adequate notification of the pending tower permit application, the City Planner may require the applicant to post additional signs or larger signs to be erected at locations as he/she deems advisable.

D. Written notice of the filing of each application for a tower permit or an application for a variance, as provided for herein, shall be given to all property owners within the boundaries of the residential area or setback area, as applicable, as indicated by the most recently approved tax rolls. Notice to all owners of record shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the Planning Department and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential test area or setback area, as applicable.

E. Written notice shall be published at least once in a local newspaper of general circulation by the department not later than the seventh calendar day following the date of filing of the required completed application. The notice shall be published in

the section of the newspaper in which other legal notices are commonly published, and shall be headed with the following words: "NOTICE OF PROPOSED TOWER CONSTRUCTION." The notice shall state the height of the tower and location of the proposed tower site, describe the intended use of the tower, the date of intended permit approval or the date of the Planning Board Hearing, if applicable, and advise that additional information may be obtained by writing or calling the Planning Department.

F. The "written notice" required above shall include at a minimum the following information on the proposed site of a tower; proposed maximum height above grade of the proposed tower; applicant information, contact information where additional information concerning this project may be obtained, and the date of the public hearing of the Planning Board to consider the variance.

G. The applicant shall be responsible for paying all costs associated with the giving of notice under this chapter.

H. For notification of variance and appeal hearings for small wind energy towers.

1. Written notice of the filing of each application for a SWET tower permit shall be given to all property owners within two hundred (200) feet of the proposed tower. Notice to all owners of record shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be mailed by the Planning Department and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential area or setback area, as applicable.
2. The applicant shall submit a completed signature sheet showing the names and signatures of all owners of record within two hundred (200) feet of the property line. If an applicant cannot acquire all of the necessary signatures, then the applicant must provide evidence of certified mail notification to out of town property owners.

(Ord. No. 1036, § 12, 9-20-2010)

18.12.130 Variance requests and procedures.

A. *Variance.*

1. Variances are authorized deviations from the property development standards in this chapter. A variance may be appropriate when strict enforcement would represent a unique, undue and unnecessary hardship on a particular property.

2. A complete application for a variance shall be submitted by a property owner, or an agent acting on behalf of the property owner, to the Planning Department, on a form prescribed by the City, along with a nonrefundable fee, which may be established from time to time by the City Commission. Under no circumstances shall a variance be proposed or considered that would authorize a use of property for a tower that is not otherwise permitted in accordance with this chapter. The property owner must sign the variance request.

B. *Planning Department Action on Minor Variations.* The Planning Department shall have the authority to find that a variance application involves a minor variation, which shall include any proposed variation from a property development standard in this chapter that would be a deviation of a minor nature from such adopted standard. In any such case, the Planning Department may grant an administrative approval that does not require any further review or action by the Planning Board. Any such approval must meet the conditions for considering variances herein. If the Planning Department determines that an application does not meet these conditions and does not merit approval, then the matter may be referred to the Planning Board for review and action if requested by the applicant. The record of Planning Department review and approval of minor variations shall be available for public inspection, upon reasonable request, during normal business hours. In no case shall the Planning Department consider a variance for reducing setback distances in these ordinances or any substantive variance from the ordinance.

C. *Planning Board Public Hearings on Variances.* For all variance applications not deemed minor by the Planning Department, the Planning Board, after due notice, shall hold a public hearing on an application for a variance. At the public hearing, the Planning Board shall consider the application, the report of the Planning Department, the relevant supporting materials and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall vote to approve, approve with conditions, table or disapprove the application for a variance.

D. *Conditions for Considering Variances.* To approve an application for a variance, the Planning Board shall make an affirmative finding that each of the following criteria, without exception, is met:

1. Such variance will not alter the essential character of the neighborhood in which the property or structure is located or the property for which the variance is sought.

2. Granting the variance will not adversely affect the health, safety or welfare of the public.

3. Special circumstances must exist that are peculiar to the land and the special circumstances are not self-imposed or the result of the actions of the applicant.

4. Literal interpretation and strict enforcement of the terms and provisions of this chapter would cause an unnecessary and undue hardship.

5. The variance, if granted, will not be contrary to the public interest as implemented in this chapter.

6. Consistent with the City's police power authority over towers, the variance, if granted, will not be detrimental to the public health, safety, or welfare;

7. The variance, if granted, will not result in a violation of any other applicable ordinance, regulation or statute enforceable by the City.

8. The variance, if granted, will not result in the violation of any applicable deed restriction or zoning regulation or the location of a tower in a park.

9. Granting the variance is the minimum action that will make possible reasonable use of the land or structure and which would carry out the spirit of this chapter and would result in substantial justice.

E. The Planning Board may impose such conditions on a variance as are necessary to accomplish the purposes of this chapter, to prevent or minimize adverse impacts upon the public and neighborhoods and to ensure compatibility. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

F. If a variance is requested from the requirements of this chapter regarding minimum distances between towers, for an antenna tower less than two thousand (2,000) feet from the nearest tower, the variance shall not be granted unless, in addition to finding that each of the conditions expressed above are satisfied, the Planning Board, after public hearing, finds that no approved tower or tower structure can accommodate the applicant's proposed antenna because the applicant has demonstrated any of the following:

1. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower will not meet the applicant's engineering requirements;

2. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not of sufficient height to meet the applicant's specific engineering requirements;

3. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower does not have sufficient structural strength and cannot reasonably be reinforced to provide sufficient structural strength;

4. The antenna array of the approved tower or tower structure located within two thousand (2,000) feet of the proposed tower would cause electromagnetic interference with the antenna array of the proposed tower, or the antenna on the proposed tower or tower structure to be located within than two thousand (2,000) feet of the approved tower would cause interference with the antenna array of the approved tower;

5. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not adaptable to accommodate additional antenna arrays or the costs required to share or adapt the approved tower or tower structure are unreasonable;

6. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not available for co-location because the owner of the approved tower or tower structure or the owner of the tract on which the approved tower or tower structure is located refuses to agree to reasonable terms necessary to accommodate the requirements for the proposed antenna; and/or

7. The approved tower or tower structure located within two thousand (2,000) feet of the proposed tower is not suitable for the specific requirements for the proposed antenna due to other factors as demonstrated by the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business.

(Ord. No. 1036, § 13, 9-20-2010)

18.12.140 Building permit requirement and plan review.

A. Following approval of a tower permit from the planning department, the applicant shall then apply to the City Building Official for a City Building Permit in accordance with the City of Hobbs Building Code. A tower permit obtained pursuant to the provisions of this chapter shall become invalid after the passage of ninety

(90) days from the date of final approval of the tower permit unless any required building permit for the construction or alteration of the tower has been obtained before the expiration of that ninety-day period.

B. The construction, placement or alteration of a tower is subject to any plan review, permitting requirement or hearing process applicable to commercial construction in general which is required either by ordinance or by the rules of the Planning Department or Planning Board; provided that the regulation or rules are consistent with the provisions of this chapter.

C. All City of Hobbs Building Permits issued for the construction of a tower prior to January 1, 2009, where the construction of a tower has not been started on or before the effective date of this chapter, are hereby cancelled and are deemed null and void.
(Ord. No. 1036, § 14, 9-20-2010)

18.12.150 Maintenance and inspection.

A. All buildings, structures, supporting structures, wires, fences or ground areas used in connection with a tower shall be maintained in a safe condition and in good working order. All equipment or machinery required by the Building Code, the Fire Code or any other applicable regulation or ordinance for a building or structure or supporting structure or device shall be maintained in good working order. The owner or operator of a tower shall be responsible for the maintenance of the tower, supporting structures, buildings, fences and ground areas.

B. By applying for a tower permit under this chapter, the applicant specifically grants permission to the city, its duly authorized agents, officials and employees, to enter upon the property for which a permit or variance is sought, after first providing reasonable notice, for the purpose of making all inspections required or authorized to be made under this chapter, the Fire Code, the Building Code, this Code or any other applicable regulation, rule or ordinance.
(Ord. No. 1036, § 15, 9-20-2010)

18.12.160 Abandonment and removal of towers.

A. Any privately owned tower that is out of service and not operated for a continuous period of twelve (12) months shall be determined to be abandoned by the City. The City Planner may issue a notice of abandonment to the tower owner that is determined to be abandoned. The owner shall have the right to respond

within thirty (30) days from the date of the notice of abandonment. If sufficient information is received by the City from the owner to demonstrate that the tower has not been abandoned, the City Planner shall cancel the notice of abandonment.

B. If the tower is determined to be abandoned, the tower owner shall remove same within ninety (90) days of receipt of notice form the City notifying the owner of the abandonment. If the antenna or tower is not removed within the ninety-day period, the City may remove the tower at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the antenna or tower. The City Attorney is hereby authorized to pursue all necessary legal remedies to implement the provisions of this subsection.
(Ord. No. 1036, § 16, 9-20-2010)

18.12.170 Tower parcel requirements.

A. Each tower parcel shall be a legally created tract of land, such as a separate subdivided property or a permanent easement. All permanent easements must be recorded as a separate land area with the Lea County Clerk. The permanent easement or summary subdivision must be approved in final form and recorded and attached with the approved tower permit.

B. Each tower parcel shall have legal access in the form of direct access to a public right-of-way or permanent easement, as determined by the Planning Department. Conditions for additional access requirements may be required for approval of a tower permit.

C. *Deed Restriction Affidavit.*

1. Every applicant for a tower permit or a variance shall furnish to the Planning Department an affidavit setting forth that the applicant is familiar with the title to the real property to which the requested permit appertains and that the intended use will not violate any applicable deed restrictions. The affidavit shall be accompanied with a certified copy of the instruments containing the deed restrictions, the instrument of revocation or termination, the declaratory judgment or any other recorded document containing restrictions that affect the use of the property.

2. A tower permit shall not be issued until the requested affidavit and supporting documentation has been produced. Any permit issued on the basis of erroneous documentation known to the applicant or an affidavit which contains false information known to the applicant is void with the same force

and effect as if it had never been issued and without the necessity of any action by the city or any other person or agency. A tower permit shall not be issued for the construction or alteration of a tower if the use or the intended use will be in violation of the recorded deed restrictions.

D. Every applicant for a tower permit or a variance shall furnish to the Planning Department documentation that the applicant owns the tower parcel or has the property owner's permission to apply for a permit. If the applicant does not own the property, both the applicant and the property owner are required to sign the permit request and tower permit, if approved.
(Ord. No. 1036, § 17, 9-20-2010)

18.12.180 Small wind energy towers (SWET).

A. *Permitted Locations.*

1. Tower permits for small wind energy towers (SWET) or towers containing wind turbines shall not be approved for any lot, tract or parcel of land where the construction of such a tower is prohibited, expressed or implied, by duly recorded deed restrictions or covenants running with the land.

2. A SWET permit shall not be approved for the construction of a tower unless the proposed tower is located at least fifty (50) feet from any street, not including dedicated alleys, unless within a beautification corridor. Such permits shall not be approved in an historic district, and within five hundred (500) feet of an historic district boundary.

3. A SWET permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of the supporting tower and the nearest property boundary is at least equal to or greater than one hundred and ten (110) percent of the total height of the tower and all components. The tower's total height and the calculated radius shall be verified and supported by a plat from a registered New Mexico surveyor.

B. *SWET Tower Structure.*

1. Each SWET tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the manufactures particular turbine system, and be certified by a New Mexico structural engineer.

2. Only monopole towers are allowed within the municipal boundaries.

3. Towers shall either maintain a galvanized steel finish or, be painted a neutral color so as to reduce visual obtrusiveness, supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the tower structure and related equipment as visually unobtrusive as possible.

C. *Noise Levels Permitted (Allowable Decibel Levels).* With the exception of short term intervals, during utility outages and/or severe wind storms, noise levels from a tower containing a small wind energy system shall not exceed fifty-five (55) dBA, measured at the property line.

D. *Application, Notification and Approval Procedures.*

1. An application for a SWET tower permit shall be submitted to the Planning Department in the time and manner prescribed by the City Planner. The applicant shall, with the filing of the completed application, submit payment of the appropriate permit fees established by the City Commission that are calculated to reasonably cover the expenses of administering the provisions of this chapter.
2. The application shall not be considered complete unless accompanied by any and all drawings, building plans, if available, restrictive covenants, descriptive data, filing fees, ownership and/or lease information, site map showing legal boundary and street access, and other pertinent data that may be required by the City Planner. Each application for a small wind energy tower permit shall include a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within one hundred fifty (150) feet of the proposed tower system.
3. On or before the 40th calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or preliminary approval of the SWES permit. Any notice of disapproval of a SWES permit application must include a written report explaining in detail the reasons for disapproval.
4. The City Planner shall issue a SWET tower permit for location of a small wind energy system tower only if the proposal meets all the requirements of this chapter. Considerations for approval of a SWET permit include neighborhood complaints or protests. On or before the 40th calendar day following the filing of the application with all required documentation and data, the City Planner shall issue to the applicant a written notice of disapproval or approval of the SWET permit. Any notice of disapproval of a SWES permit

application must include a written report explaining in detail the reasons for disapproval. If a SWET permit is denied, the applicant may consider an appeal pursuant to this chapter.

(Ord. No. 1036, § 18, 9-20-2010)

18.12.190 Amateur radio antennas and towers.

A. Amateur radio antenna towers constructed prior to the effective date of this section are exempted from subsequent changes in these regulations by the City and may be repaired as required.

B. The City will reasonably accommodate amateur radio service communications by allowing antenna structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications. However, the City reserves the right to regulate amateur radio antennas pursuant to this chapter, by requiring amateur radio antennas or support structures to meet screening, setback and placement, construction and health and safety standards. The City has determined that the regulation herein constitutes the minimum practicable regulation to accomplish the City's purposes in adopting this chapter.

(Ord. No. 1036, § 19, 9-20-2010)

18.12.200 Cumulative effect.

This chapter is cumulative of other requirements imposed by ordinances and regulations of the City. To the extent of any inconsistency, the more restrictive provision shall govern. Without limitation, the issuance of a permit under this chapter shall not excuse compliance with the Building Code, including permits required thereunder.

(Ord. No. 1036, § 20, 9-20-2010)

18.12.210 Transitional provision.

The provisions of this chapter shall apply only to towers constructed, placed, or altered after the effective date of this chapter or amendments thereto, as applicable, except for the fencing requirements of Section 18.12.070 of this chapter which shall be applicable to all towers subject to this chapter.

(Ord. No. 1036, § 21, 9-20-2010)

18.12.220 Appeals.

A. *Appeal of Staff Decision.* An appeal to the Planning Board of the staff's decision may be made if filed by the applicant in writing not more than fifteen (15) days after the date the applicant is officially notified of the staff decision. The

applicant's appeal shall state all reasons for dissatisfaction with the action of the staff. The Planning Board may, by majority vote, approve, conditionally approve, or deny the site plan approval. The recommendation of the Planning Board is final unless the applicant requests in writing, within fifteen (15) days of the Planning Board action, a final review by the City Commission.

B. *Appeal of Planning Board Actions.* If a decision of the Planning Board recommends denial by the City, the applicant or any aggrieved party may appeal this decision to the City Commission. Such appeals must be filed within fifteen (15) days following the date of the Planning Board action.

C. *City Commission Review.* The staff will schedule a hearing on the appeal before the City Commission, forward the staff recommendation and the action of the Planning Board to the Commission, and notify the applicant of the hearing date. The City Commission may, by majority vote, approve, conditionally approve, or deny the site plan. The action of the City Commission is final.

D. *Appeals can be made by any Aggrieved Party.*

1. Any property owner, association or group within the residential area or setback area, as applicable, who has reasonable grounds to believe that approval of an application for a tower permit, the granting of a variance, or the proposed construction will violate any applicable restriction, rule, regulation or ordinance may request a hearing before the commission to protest and present evidence establishing their allegations. The hearing request must state the specific grounds relied upon and be presented to the Planning Department no later than fifteen (15) calendar days following the date of an action made by the City for a tower permit or variance, as applicable. Copies of all supporting documents, instruments, or other materials that are to be presented to the City shall accompany the hearing request and shall be available for inspection and photocopying.

2. An applicant for a tower permit that has been denied by the Planning Department has fifteen (15) calendar days following the issuance of a notice of disapproval to file a written notice of appeal in the manner prescribed by the Planning Department. The City Planner shall waive this requirement upon a finding of good cause.

(Ord. No. 1036, § 22, 9-20-2010)

18.12.230 Enforcement and implementation.

A. The City of Hobbs will enforce this chapter and may institute any appropriate action or proceedings to:

1. Prevent such unlawful tower construction, location, erection, conversion, maintenance or use;
2. Restrain, correct or abate the violation;
3. Prevent the use of such tower, structure or land; or
4. Prevent any illegal act, conduct, business or use in or about such premises.

B. *Revocation of Certificate of Occupancy if Violations Occur.* The City Planner is empowered to revoke any tower permit if repeated violations of this chapter occur.

C. *Annexation Variance.* Following the effective date of any annexation of new territory into the City limits of Hobbs, a variance and abatement of the provisions of this chapter is granted to any existing tower located in the annexation area for a period of five (5) years following the effective date of annexation. This variance applies to only to new annexations after the effective date of this chapter.

D. Any person who violates any provision of this chapter shall be found guilty of a misdemeanor, and upon conviction in the Municipal Court of the City of Hobbs shall be punished by a fine of not less than two hundred fifty dollars ($250.00) or more than five hundred dollars ($500.00) for a first or subsequent offense and by imprisonment for not more than ninety (90) days, or both, for a second or subsequent offense.

E. All authority granted to the City Attorney and the City Planner and their designees under this chapter shall be exercised uniformly on behalf of and against all citizens and property of the city. Prior to the issuance of a citation under this chapter, the City Planner shall furnish notice to the last known address of the tower owner of the alleged violation and shall afford the owner a reasonable opportunity to cure the violation, consistent with the risks posed by the violation and the efforts that would be required to cure it.

F. City attorney authorized to file suit to abate violation. The City Attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this chapter. All authority granted to the City Attorney under this chapter shall be exercised uniformly on behalf of and against all citizens and property in the city. This authorization shall be cumulative

and in addition to any other civil or criminal penalty provisions. The City, acting through the City Attorney or any other attorney representing the city, may file an action in a court of competent jurisdiction to recover damages from the owner or the agent of the owner of a tower or tower structure in an amount adequate for the city to undertake any activity necessary to bring about compliance with this chapter.
(Ord. No. 1036, § 23, 9-20-2010)

18.12.240 Fees.

Tower permit application fees are as follows:

A. *Tower Permit for Wireless Communication Towers and all other towers over fifty (50) feet in height:* Five hundred dollars ($500.00) plus actual costs of legal notice, notice signs, publication and notification letter mailing.

B. *Tower Permit for Small Wind Energy Towers and all other towers under fifty (50) feet in height*: One hundred dollars ($100.00) plus actual cost of legal notice, notice signs, publication and certified mailing.

C. Appeals: Two hundred fifty dollars ($250.00) plus actual cost of legal notice, notice signs, publication and certified mailing.

(Ord. No. 1036, § 24, 9-20-2010)

FRANCHISE ORDINANCES

Ordinance No. 776 Gas Franchise
Ordinance No. 782 Electricity Franchise
Ordinance No. 794 Telecommunications Franchise
Ordinance No. 942 Cable Franchise
Resolution No. 5762 Transfer of Cable Franchise
Ordinance No. 862 Telecommunications Franchise
Resolution No. 3631 Transfer of Telephone and Other Communications Franchise
Ordinance No. 1067 Natural Gas Franchise

Gas Franchise

ORDINANCE NO. 776

AN ORDINANCE GRANTING A FRANCHISE TO HOBBS GAS COMPANY TO OPERATE AND MAINTAIN A GAS DISTRIBUTION SYSTEM IN THE CITY OF HOBBS, NEW MEXICO; GRANTING THE SAID COMPANY THE RIGHT TO INSTALL AND MAINTAIN GAS DISTRIBUTION FACILITIES IN PUBLIC RIGHTS-OF-WAY; ESTABLISHING CONDITIONS FOR THE GRANTING OF THE FRANCHISE; PROVIDING FOR PAYMENT BY SAID COMPANY OF A FRANCHISE FEE; AND CONTAINING OTHER PROVISIONS.

WHEREAS, the Hobbs Gas Company is now and has been engaged in the business of constructing and maintaining a gas distribution system within the City of Hobbs; and

WHEREAS, the City of Hobbs has previously granted to said Company a franchise to operate said facilities and wishes to grant another franchise governing future operations of said Company in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

SECTION I. DEFINITIONS.

For the purpose of this ordinance, the following terms shall have the meanings given herein:

A. "City" refers to the City of Hobbs, New Mexico;

B. "Company" refers to Hobbs Gas Company;

C. "Commission" refers to the City Commission of the City of Hobbs;

D. "Gross receipts" shall mean all receipts derived by the Company from the sale of gas to residential and commercial customers within the corporate limits of the City. NOTE: Commercial customers as used herein shall not be construed to include any political subdivisions of Federal, State or Local government or any non-profit organization exempt from the gross receipts tax by the State of New Mexico or any industrial customer as defines by the rules and regulations of the New Mexico Public Service Commission.

SECTION II. GRANT OF AUTHORITY.

The Company hereby is granted a franchise to operate a gas distribution system within the City, and this grant shall include the right and privilege to construct, erect, operate and maintain in, on, along, across, over, and under the streets, alleys, easements, and public ways of the City now or in the future dedicated, and other public grounds and places, all the pipelines and appurtenant equipment necessary for the maintenance and operation of a gas distribution system within the City. Consent of the City Commission for the use by the Company of public grounds and places other than streets, alleys, easements, and public ways for its facilities installed after the effective date of this ordinance will be in the form of an easement, with the City as Grantor and the Company as Grantee.

SECTION III. GRANT NON-EXCLUSIVE.

Nothing herein shall be construed as giving to the Company any exclusive privilege.

SECTION IV. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.

A. Location—All pipelines and appurtenant equipment for the purpose of laying, maintaining and operating pipelines and appurtenant equipment necessary to deliver and sell gas to persons, firms, and corporations, including the general public, for heat, light and power purposes installed by the Company in public rights-of-way shall be located so as to cause minimum interference with other facilities and proper uses of the rights-of-way. All above-ground fixtures shall be placed so as to not interfere with the usual travel on said rights-of-way. Underground facilities may be located under the traveled portion of rights-of-way provided the surface of such right-of-way is restored as hereunder provided.

B. Restoration - If, while installing, repairing or maintaining its facilities, the Company disturbs the surface of any right-of-way or public place, the Company shall restore the surface to as good a condition as before the disturbance and maintain same to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

C. Specifications and Standards - All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable City, State and Federal specifications and standards.

D. Relocation of Facilities - In the event that any time during the period of this franchise, the City shall elect to alter or change the grade or location of any publicly owned utility, street, easement, alley, or other public way for the purpose of joint utilities or street improvement, the Company, upon reasonable notice by the City of the necessity, and after due consideration being given to Company's seasonal load requirements, shall remove, relay or relocate, at Company's determination, its electric lines and other related fixtures on the City's right-of-way at its own cost and expense.

E. Indemnity by Company - The City shall not be liable or responsible for, and shall be saved and held harmless by the Company from any and all claims and damages of any kind (including injury to or death of any person or persons and damage to or loss of property) arising out of or attributed to the erection, construction or operation of any or all of the plants, systems, and works of Company. Company agrees to provide and pay for Commercial General Liability insurance with limits normally provided in other operations of this type by Company. The City shall be named as an Additional Insured. Company agrees to provide evidence of such insurance to the City Manager. Such evidence shall be a copy of the Certificate of Insurance.

SECTION V. CASH CONSIDERATION.

In consideration for the grant of franchise and the right to use public rights-of-way within the City, the Company shall pay, quarterly, a cash consideration in an amount equal to two percent (2%) of the "gross receipts", as defined in Section I (d), of the Company from the sale of gas to consumers within the corporate limits of the City of Hobbs. Payments shall be paid quarterly on or before the last day of April, July, October and January for the entire period this franchise is in force. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local improvements and except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "gross receipts" herein. To assure proper payment as herein provided, the books of the Company shall be open to inspection by the City at all reasonable times.

SECTION VI. ANNEXATIONS.

This franchise shall apply to any property properly annexed to the City as provided by law, upon such annexation.

SECTION VII. STANDARDS OF SERVICE.

A. The New Mexico Public Service Commission has general and exclusive power and jurisdiction to regulate and supervise Company in respect to its rates and service regulations and in respect to its securities, all in accordance with provisions of the New Mexico Public Utility Act (§ 62-6-4, NMSA 1978 Comp.). A copy of Company's rates and service regulations are on file for public reading at the office of the City Clerk during normal working hours.

B. If at any time the New Mexico Utility Act (§ 62-6-4, NMSA 1978 Comp.) is amended or repealed with the effect of such action being the deletion of standards of service in the City as are now in effect, the City reserves the right to establish standards of service not inconsistent with the terms of said statute or regulations promulgated pursuant thereto prior to said amendment or repeal.

SECTION VIII. TERMINATION.

If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from City to Company of such non-payment (which period of thirty (30) days commence with the day after receipt of such noticed), this franchise may be terminated by the City. If the Company substantially fails to comply with any of the other material provisions of this franchise and fails to cure same or is unable to provide justification for such non-compliance within sixty (60) days after it has received written notice from the City claiming such non-compliance with any of the material terms and provisions of this franchise, then City shall give Company an additional written notice that this franchise will be terminated effective ninety (90) days after receipt of said notice to Company, unless Company corrects such non-compliance within said period of time. If the City and Company disagree over whether Company has substantially failed to comply with any of the material provisions of this franchise or has failed to cure an alleged non-compliance, the franchise shall continue until agreement is reached between the City and Company resolving the matter or until the matter has been litigated through the Courts to final judgment. Non-compliance by Company of any terms and provisions of this franchise due to force majeure or any cause beyond its control does not constitute reason for termination of this franchise.

SECTION IX. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION X. TERM.

The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law and shall continue in force and effect for a period of twenty-five (25) years thereafter, or until such time as another franchise, by and between the parties hereto, is granted and accepted, whichever occurs first.

SECTION XI. PUBLICATION COSTS.

This ordinance shall be published as provided by law and the cost thereof shall be paid by the Company upon presentation of an invoice for publication and proof of publication by the City.

SECTION XII. ASSIGNMENT.

The rights of the Company hereunder shall not be assignable without first giving the City at least thirty (30) days notice prior to filing with the New Mexico State Corporation Commission of the Company's intention to assign its franchise rights hereunder. The Company shall assist the City Manager in providing information which reflects the financial ability (e.g., financial audit) and the management ability (e.g. experience and resume of proposed management) of its proposed Assignee to operate a telephone utility. The aforesaid thirty (30) days notice shall not commence to run until Company has initiated good faith efforts to provide the assistance or information as requested by the City Manager.

SECTION XIII. SEPARABILITY.

Should any part or portion hereof be declared invalid, void or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct from the balance and such declaration shall not affect the validity of the remaining portions hereof.

SECTION XIV. REPEALER.

Once in effect, this ordinance shall repeal Ordinance No. 515 and Ordinance No. 600 in their entirety.

SECTION XV. ACCEPTANCE AND EFFECTIVE DATE.

The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED, PASSED AND ADOPTED this 7th day of June, 1988.

ATTEST: /s/_____
MAYOR

/s/_____
CITY CLERK

ACCEPTANCE

WHEREAS, the City Commission of the City of Hobbs, Lea County, New Mexico, enacted on June 6, 1988, an Ordinance No. 776, entitled:

AN ORDINANCE GRANTING A FRANCHISE TO HOBBS GAS COMPANY TO OPERATE AND MAINTAIN A GAS DISTRIBUTION SYSTEM IN THE CITY OF HOBBS, NEW MEXICO; GRANTING THE SAID COMPANY THE RIGHT TO INSTALL AND MAINTAIN GAS DISTRIBUTION FACILITIES IN PUBLIC RIGHTS-OF-WAY; ESTABLISHING CONDITIONS FOR THE GRANTING OF THE FRANCHISE; PROVIDING FOR PAYMENT BY SAID COMPANY OF A FRANCHISE FEE; AND CONTAINING OTHER PROVISIONS.

WHEREAS, said Ordinance was duly approved by the Mayor and attested by the City Clerk;

NOW, THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, Hobbs Gas Company hereby accept said Ordinance and files this as a written Acceptance with the Clerk of the City of Hobbs.

DATED this 14th day of June, 1988.

ATTEST: HOBBS GAS COMPANY

/s/_____ BY: /s/_____

Secretary C. C. Matthews, President

Acceptance filed in the Office of the City Clerk of Hobbs, Lea County, New Mexico, this 15th day of June, 1988.

/s/_____

City Clerk

Electricity Franchise

ORDINANCE NO. 782

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO SOUTHWESTERN PUBLIC SERVICE COMPANY, A NEW MEXICO CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY CALLED "PUBLIC AREAS") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY INTO, IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY AND (ii) SUPPLY AND FURNISH TO THE CITY AND ITS INHABITANTS AND TO ANY OTHER PERSON OR PERSONS, FIRMS OR CORPORATIONS, WHETHER LOCATED WITHIN OR WITHOUT THE CITY, ELECTRIC ENERGY FOR LIGHT, POWER, COOLING, HEATING OR FOR EITHER OR ALL OF THESE PURPOSES OR FOR ANY OTHER PURPOSE OR PURPOSES FOR WHICH ELECTRICITY MAY BE USED. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Southwestern Public Service Company is now and has been engaged in the business of supplying and furnishing to the City of Hobbs, New Mexico, and its inhabitants and to any other persons or persons, firms or corporations, whether located within or without the City, electric energy for light, power, cooling, heating or for either or all of these purposes or for any other purpose or purposes for which electricity may be used; and

WHEREAS, the City of Hobbs has previously granted to said Company a franchise granting the privilege to enter upon and use the streets, avenues,

boulevards, alleys, highway, sidewalks, bridges and other public grounds of the City to operate said facilities and wishes to grant another franchise governing future operations of said Company in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

SECTION I. DEFINITIONS.

For the purpose of this ordinance, the following terms shall have the meanings given herein:

A. "City" refers to the City of Hobbs, New Mexico;

B. "Company" refers to Southwestern Public Service Company;

C. "Commission" refers to the City Commission of the City of Hobbs;

D. "Gross receipts" shall mean all receipts derived by the Company from the sale of electricity to residential and commercial customers within the corporate limits of the City. NOTE: Commercial customers as used herein shall not be construed to include any political subdivisions of Federal, State or Local government or any cooperative organization or industrial accounts serviced under the Company's published industrial rates as filed with the Public Service Commission.

SECTION II. GRANT OF AUTHORITY.

The Company hereby is granted a franchise to erect, construct, equip, extend, alter, maintain, repair, replace, remove, and operate its equipment and facilities on, along, across, over, and under the streets, alleys, easements, and public ways of the City now or in the future dedicated, and other public grounds and places, works, systems, plants, poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers, and other distribution and transmission instrumentalities, facilities and appurtenances necessary or proper for the transmission and distribution of electricity into, in, within, from, across, and through the City. Consent of the City for the use by the Company of public grounds and places other than streets, alleys, boulevards, highways, sidewalks, bridges, easements, and public ways for its facilities installed after the effective date of this ordinance will be in the form of an easement, with the City as Grantor and the Company as Grantee.

SECTION III. GRANT NON-EXCLUSIVE.

Nothing herein shall be construed as giving to the Company any exclusive privilege.

SECTION IV. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.

A. Location—All electric lines and appurtenant equipment for the purpose of installing, maintaining and operating electric lines, and appurtenant equipment necessary to deliver and sell electricity to persons, firms, and corporations, including the general public, for heat, light and power purposes installed by the Company in public rights-of-way shall be located so as to cause minimum interference with other facilities and proper uses of the rights-of-way. All above-ground fixtures shall be placed so as to not interfere with the usual travel on said rights-of-way. Underground facilities may be located under the traveled portion of rights-of-way provided the surface of such right-of-way is restored as hereunder provided.

B. Restoration - If, while installing, repairing or maintaining its facilities, the Company disturbs the surface of any right-of-way or public place, the Company shall restore the surface to as good a condition as before the disturbance and maintain same to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

C. Specifications and Standards - All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable City, State and Federal specifications and standards.

D. Relocation of Facilities - In the event that any time during the period of this franchise, the City shall elect to alter or change the grade or location of any publicly owned utility, street, easement, alley, or other public way for the purpose of joint utilities or street improvement, the Company, upon reasonable notice by the City of the necessity, and after due consideration being given to Company's seasonal load requirements, shall remove, relay or relocate, at Company's determination, its electric lines and other related fixtures on the City's right-of-way at its own cost and expense.

E. Indemnity by Company - The City shall not be liable or responsible for, and shall be saved and held harmless by the Company from any and all claims and damages of any kind (including injury to or death of any person or persons and damage to or loss of property) arising out of or attributed to the erection, construction or operation of any or all of the plants, systems, and works of Company. Company agrees to provide and pay for Commercial General Liability insurance with limits normally provided in other operations of this type by Company. The City shall be named as an Additional Insured. Company agrees to provide evidence of such insurance to the City Manager. Such evidence shall be a copy of the Certificate of Insurance.

SECTION V. CASH CONSIDERATION.

In consideration for the grant of franchise and the right to use public rights-of-way within the City, the Company shall pay, quarterly, a cash consideration in an amount equal to two percent (2%) of the "gross receipts", as defined in Section I (d), of the Company from the sale of electricity to consumers within the corporate limits of the City of Hobbs. Payments shall be paid monthly not later than thirty (30) days after the end of the month for the receipts received during that month of the entire period this franchise is in force. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local improvements and except any occupation or other tax assessed on Company or its properties, except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "gross receipts" herein. To assure proper payment as herein provided, the books of the Company shall be open to inspection by the City at all reasonable times.

SECTION VI. ANNEXATIONS.

This franchise shall apply to any property properly annexed to the City as provided by law, upon such annexation.

SECTION VII. STANDARDS OF SERVICE.

A. The New Mexico Public Service Commission has general and exclusive power and jurisdiction to regulate and supervise Company in respect to its rates and service regulations and in respect to its securities, all in accordance with provisions

of the New Mexico Public Utility Act (§ 62-6-4, NMSA 1978 Comp.). A copy of Company's rates and service regulations are on file for public reading at the office of Southwestern Public Service Company during normal working hours.

B. If at any time the New Mexico Utility Act (§ 62-6-4, NMSA 1978 Comp.) is amended or repealed with the effect of such action being the deletion of standards of service in the City as are now in effect and no successor is named by the State of New Mexico, the City reserves the right to establish standards of service consistent with those now in effect in the City or at the time of any such amendment or repeal. If standards of service are established by the City and the City becomes the regulative authority for such standards of service, the costs (in excess of established costs) for such standards of service, will be borne by the rate payers of the City.

SECTION VIII. TERMINATION.

If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from City to Company of such non-payment (which period of thirty (30) days commence with the day after receipt of such notice), this franchise may be terminated by the City. If the Company substantially fails to comply with any of the other material provisions of this franchise and fails to cure same or is unable to provide justification for such non-compliance within sixty (60) days after it has received written notice from the City claiming such non-compliance with any of the material terms and provisions of this franchise, then City shall give Company an additional written notice that this franchise will be terminated effective ninety (90) days after receipt of said notice to Company, unless Company corrects such noncompliance within said period of time. If the City and Company disagree over whether Company has substantially failed to comply with any of the material provisions of this franchise or has failed to cure an alleged non-compliance, the franchise shall continue until agreement is reached between the City and Company resolving the matter or until the matter has been litigated through the Courts to final judgment. Non-compliance by Company of any terms and provisions of this franchise due to force majeure or any cause beyond its control does not constitute reason for termination of this franchise.

SECTION IX. ASSIGNMENT.

The rights of the Company hereunder shall not be assignable without first giving the City at least thirty (30) days notice prior to filing with the New Mexico State Corporation Commission of the Company's intention to assign its franchise rights

hereunder. The Company shall assist the City Manager in providing information which reflects the financial ability (e.g., financial audit) and the management ability (e.g. experience and resume of proposed management) of its proposed Assignee to operate a telephone utility. The aforesaid thirty (30) days notice shall not commence to run until Company has initiated good faith efforts to provide the assistance or information as requested by the City Manager.

SECTION X. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION XI. TERM.

The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law and shall continue in force and effect for a period of twenty-five (25) years thereafter, or until such time as another franchise, by and between the parties hereto, is granted and accepted, whichever occurs first

SECTION XII. PUBLICATION COSTS.

This ordinance shall be published as provided by law and the cost thereof shall be paid by the Company upon presentation of an invoice for publication and proof of publication by the City.

SECTION XIII. SEPARABILITY.

Should any part or portion hereof by declared invalid, void or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct from the balance and such declaration shall not affect the validity of the remaining portions hereof.

SECTION XIV. REPEALER.

Once in effect, this ordinance shall repeal Ordinance No. 514 in its entirety.

SECTION XV. ACCEPTANCE AND EFFECTIVE DATE.

The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk, and upon

such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED, PASSED AND ADOPTED this 21st day of February, 1989.

/s/_____
Mayor

ATTEST:
/s/_____
City Clerk

Telecommunications Franchise

ORDINANCE NO. 794

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO GTE SOUTHWEST INCORPORATED, A DELAWARE CORPORATION AUTHORIZED TO CONDUCT BUSINESS IN NEW MEXICO, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY CALLED "PUBLIC AREAS") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE RENDITION OF TELEPHONE AND OTHER COMMUNICATIONS SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONGDISTANCE TELEPHONE BUSINESS IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, GTE Southwest Incorporated is now and has been engaged in the business of supplying and furnishing to the City of Hobbs, New Mexico, and its inhabitants and to any other persons or persons, firms or corporations, whether located within or without the City, telephone and other communication services; and

WHEREAS, the City of Hobbs has previously granted to said Company a franchise granting the privilege to enter upon and use the streets, avenues, boulevards, alleys, highway, sidewalks, bridges and other public grounds of the City to operate said facilities and wishes to grant another franchise governing future operations of said Company in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

SECTION I. DEFINITIONS.

For the purpose of this ordinance, the following terms shall have the meanings given herein:

A. "City" refers to the City of Hobbs, New Mexico;

B. "Company" refers to GTE Southwest Incorporated;

C. "Commission" refers to the City Commission of the City of Hobbs;

D. "Gross receipts" shall mean all receipts derived by the Company from exchange access rates, contained in Section 6 of its approved New Mexico General Exchange Tariff, charged customers within the corporate limits of the City.

SECTION II. GRANT OF AUTHORITY.

The Company hereby is granted a franchise to erect, construct, equip, extend, alter, maintain, repair, replace, remove, and operate it equipment and facilities on, along, across, over, and under the streets, alleys, easements, and public ways of the City now or in the future dedicated, and other public grounds and places, works, systems, plants, poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers, and other distribution and transmission instrumentalities, facilities and appurtenances necessary or proper for the transmission and distribution of telephone and other communication services into, in, within, from, across, and through the City. Consent of the City for the use by the Company of public grounds and places other than streets, alleys, boulevards, highways, sidewalks, bridges, easements, and public ways for its facilities installed after the effective date of this ordinance will be in the form of an easement, with the City as Grantor and the Company as Grantee.

SECTION III. GRANT NON-EXCLUSIVE.

Nothing herein shall be construed as giving to the Company any exclusive privilege.

SECTION IV. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.

A. Location - All telephone and communication lines and appurtenant equipment for the purpose of installing, maintaining and operating telephone and communication lines, and appurtenant equipment necessary to deliver and sell telephone and communication services to persons, firms, and corporations, including the general public, for telephone and communication purposes installed by the Company in public rights-of-way shall be located so as to cause minimum interference with other facilities and proper uses of the rights-of-way. All above-ground fixtures shall be placed so as to not interfere with the usual travel on said rights-of-way. Underground facilities may be located under the traveled portion of rights-of-way provided the surface of such right-of-way is restored as hereunder provided.

B. Restoration - If, while installing, repairing or maintaining its facilities, the Company disturbs the surface of any right-of-way or public place, the Company shall restore the surface to as good a condition as before the disturbance and maintain same to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

C. Specifications and Standards - All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable City, State and Federal specifications and standards.

D. Relocation of Facilities - In the event that any time during the period of this franchise, the City shall elect to alter or change the grade or location of any publicly owned utility, street, easement, alley, or other public way for the purpose of joint utilities or street improvement, the Company, upon reasonable notice by the City of the necessity, and after due consideration being given to Company's seasonal load requirements, shall remove, relay or relocate, at Company's determination, its telephone and communication lines and other related fixtures on the City's right-of-way at its own cost and expense.

E. Tree Trimming - That the right, license, privilege and permission is hereby granted to the Company, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the City, so as to prevent the branches of such trees from coming in contact with the wires or cables

of the Company, and when so ordered by the City, said trimming shall be done under supervision and direction of the City or of any City official to whom said duties have been or may be delegated.

F. Indemnity by Company - The City shall not be liable or responsible for, and shall be saved and held harmless by the Company from any and all claims and damages of any kind (including injury to or death of any person or persons and damage to or loss of property) arising out of or attributed to the erection, construction or operation of any or all of the plants, systems, and works of Company. Company agrees to provide and pay for Commercial General Liability insurance with limits normally provided in other operations of this type by Company. The City shall be named as an Additional Insured. Company agrees to provide evidence of such insurance to the City Manager. Such evidence shall be a copy of the Certificate of Insurance.

SECTION V. CASH CONSIDERATION.

In consideration for the grant of franchise and the right to use public rights-of-way within the City, the Company shall pay, quarterly, a cash consideration in an amount equal to two and three-tenths percent (2.3%) of the "gross receipts", as defined in Section I (d), of the Company from the sale of telephone and communication services to consumers within the corporate limits of the City of Hobbs. The first payment hereunder shall be calculated from the date of acceptance of the Ordinance through the last day of the first full calendar quarter following acceptance of this Ordinance, and shall be made within thirty (30) days following the last day of the period for which the payment is calculated, and thereafter payment for each calendar quarter shall be due and payable on or before the last day of the calendar month following the close of the calendar quarter for which the payment is calculated. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local improvements and except any occupation or other tax assessed on Company or its properties, except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "gross receipts" herein. To assure proper payment as herein provided, the books of the Company shall be open to inspection by the City at all reasonable times.

SECTION VI. ANNEXATIONS.

This franchise shall apply to any property properly annexed to the City as provided by law, upon such annexation.

SECTION VII. STANDARDS OF SERVICE.

A. The New Mexico State Corporation Commission has general and exclusive power and jurisdiction to regulate and supervise Company in respect to its rates and service regulations and in respect to its securities, all in accordance with provisions of the New Mexico Telecommunications Act. A copy of Company's rates and service regulations are on file for public reading at the office of GTE Southwest Incorporated during normal working hours.

B. If at any time the New Mexico Telecommunications Act is amended or repealed with the effect of such action being the deletion of standards of service in the City as are now in effect and no successor is named by the State of New Mexico, the City reserves the right to establish standards of service consistent with those now in effect in the City or at the time of any such amendment or repeal. If standards of service are established by the City and the City becomes the regulative authority for such standards of service, the costs (in excess of established costs) for such standards of service, will be borne by the rate payers of the City.

SECTION VIII. TERMINATION.

If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from City to Company of such non-payment (which period of thirty (30) days commence with the day after receipt of such noticed), this franchise may be terminated by the City. If the Company substantially fails to comply with any of the other material provisions of this franchise and fails to cure same or is unable to provide justification for such non-compliance within sixty (60) days after it has received written notice from the City claiming such non-compliance with any of the material terms and provisions of this franchise, then City shall give Company an additional written notice that this franchise will be terminated effective ninety (90) days after receipt of said notice to Company, unless Company corrects such noncompliance within said period of time. If the City and Company disagree over whether Company has substantially failed to comply with any of the material provisions of this franchise or has failed to cure an alleged non-compliance, the franchise shall continue until agreement is reached between the City and Company resolving the matter or until the matter has been litigated through the Courts to final judgment. Non-compliance by Company of any terms and provisions of this franchise due to force majeure or any cause beyond its control does not constitute reason for termination of this franchise.

SECTION IX. ASSIGNMENT.

The rights of the Company hereunder shall not be assignable without first giving the City at least thirty (30) days notice prior to filing with the New Mexico State Corporation Commission of the Company's intention to assign its franchise rights hereunder. The Company shall assist the City Manager in providing information which reflects the financial ability (e.g., financial audit) and the management ability (e.g. experience and resume of proposed management) of its proposed Assignee to operate a telephone utility. The aforesaid thirty (30) days notice shall not commence to run until Company has initiated good faith efforts to provide the assistance or information as requested by the City Manager.

SECTION X. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION XI. TERM.

The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law and shall continue in force and effect for a period of twenty-five (25) years thereafter, or until such time as another franchise, by and between the parties hereto, is granted and accepted, whichever occurs first.

SECTION XII. PUBLICATION COSTS.

This ordinance shall be published as provided by law and the cost thereof shall be paid by the Company upon presentation of an invoice for publication and proof of publication by the City.

SECTION XIII. SEPARABILITY.

Should any part or portion hereof be declared invalid, void or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct from the balance and such declaration shall not affect the validity of the remaining portions hereof.

SECTION XIV. REPEALER.

Once in effect, this ordinance shall repeal Ordinance No. 416 in its entirety.

SECTION XV. ACCEPTANCE AND EFFECTIVE DATE.

The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED, PASSED AND ADOPTED this 2nd day of July, 1990.

/s/_____
Mayor

ATTEST:

/s/_____
City Clerk

ACCEPTANCE

WHEREAS, the City Commission of the City of Hobbs, New Mexico, did on the 2nd day of July, 1990, enact an Ordinance entitled:

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO GTE SOUTHWEST INCORPORATED, A DELAWARE CORPORATION AUTHORIZED TO CONDUCT BUSINESS IN NEW MEXICO, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY CALLED "PUBLIC AREAS") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE RENDITION OF TELEPHONE AND OTHER COMMUNICATIONS SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONG- DISTANCE TELEPHONE BUSINESS IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

and

WHEREAS, said Ordinance was on the 2nd day of July, 1990, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Clerk:

NOW, THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, GTE Southwest Incorporated hereby accepts said Ordinance and files this its written compliance with the City Clerk of the City of Hobbs, New Mexico, in her office.

DATED this 13th day of July, A.D. 1990.

ATTEST: GTE SOUTHWEST INCORPORATED

/s/ _____
ASSISTANT SECRETARY
/s/ _____
VICE PRESIDENT

Acceptance filed in the office of the City Clerk of Hobbs, New Mexico, this 19th day of July, A.D. 1990.

/s/ _____
CITY CLERK

Cable Franchise

ORDINANCE NO. 942*

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO US CABLE OF COSTAL TEXAS, L.P., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE, LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY "PUBLIC WAY") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF FIFTEEN (15) YEARS, TO (1) ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE TRANSMISSION AND DISTRIBUTION OF ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING INTO, IN, WITHIN, FROM, ACROSS AND THROUGH THE CITY; AND (2) SUPPLY AND FURNISH TO THE CITY AND ITS INHABITANTS AND TO ANY OTHER PERSON OR PERSONS, FIRMS OR CORPORATIONS, WHETHER LOCATED WITHIN OR WITHOUT THE CITY, ONE-WAY TRANSMISSION OF VIDEO PROGRAMMING FOR ANY OTHER PURPOSE OR PURPOSES FOR WHICH ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING MAY BE USED. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, US Cable of Costal-Texas, L.P., is now and has been engaged in the business of supplying and furnishing to the City of Hobbs, New Mexico, and its inhabitants and to any other persons or persons, firms or corporations, whether located within or without the City, one-way transmission of video programming or for any other purpose or purposes for which one-way transmission to subscribers of video programming or other programming service may be used; and

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***Editor's note—**Ordinance No. 942, adopted Dec. 20, 2005 and effective Jan. 1, 2006, replaces franchise Ordinance No. 798, adopted Nov. 5, 1990 and effective January 1, 1991, Resolution No. 3487, adopted Feb. 16, 1999.

WHEREAS, the City of Hobbs has previously granted to said Company a Franchise granting the privilege to enter upon and use the streets, avenues, boulevards, alleys, highways, sidewalks, bridges and other public grounds of the City to operate said facilities and wishes to grant another Franchise governing future operations of said Company in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

SECTION I. DEFINITIONS.

For the purpose of this ordinance, the following terms shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number, and words in the singular number include the plural number:

A. "City" refers to the City of Hobbs, New Mexico;

B. "Company" refers to US Cable of Costal-Texas, L.P., or the lawful successor, transferee, or assignee thereof.

C. "Commission" refers to the City Commission of the City of Hobbs;

D. "Gross Revenues" mean any and all revenue derived directly or indirectly by Company and/or its affiliates from the operation of its Cable System within the City of Hobbs including, but not limited to, (1) all Cable Service fees; (2) Franchise Fees; (3) late fees, returned check charges; (4) installation and reconnection fees; (5) fee payments or other consideration earned, whether or not received, by Company from programmers for carriage of Cable Services or marketing support in connection with the Cable Services on the Cable System; (6) upgrade and downgrade fees; (7) advertising revenue with no deduction or offset for internal commissions earned by employees of Company or its affiliates; (8) home shopping commissions; (9) converter and remote control rental fees; (10) lockout device fees; (11) guides; (12) production charges; and (13) to the extent permissible under applicable laws, Internet service and equipment fees and any and all other related consideration earned or derived by Company resulting from the provision of cable modem service and data services within the City. The term "Gross Revenues" shall not include any taxes on Services furnished by Company imposed upon Subscribers by and municipality, State or other governmental unit and collected by Company for such governmental unit.

E. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the re-transmission of local broadcast television signals.

F. "Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et al., as amended.

G. "Cable Service" means (1) the one-way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other lawful communication service.

H. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide cable service and other lawful communications service to subscribers.

I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

J. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service and other lawful communications service to subscribers.

K. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.

L. "Public Way" shall mean the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. Public way also shall mean any easement now or hereafter held by the City within the service area for the purpose of installing, operating, repairing and maintaining the cable system. Public Way also shall mean any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easement or rights-

of-way as shall, within their proper use and meaning, entitle the City and the Company to the use thereof for the purposes of installing or transmitting Company's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

M. "Service Area" means the present municipal boundaries of the City, and shall include any addition thereto by annexation or other legal means.

N. "Service Tier" means a category of cable service or other services, provided by Company and for which a separate charge is made by Company.

O. "Subscriber" means a person or user of the cable system who lawfully receives cable services or other service therefrom with Company's express permission.

P. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION II. GRANT OF AUTHORITY.

Subject to the terms and conditions of the Ordinance as it existed upon the effective date of this Franchise, the City hereby grants to Company a Franchise which authorizes the Company to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. The location of all poles to be placed or constructed by the Company in the City of Hobbs shall be approved in writing, in advance, by the City Engineer of the City and shall conform to the National Electrical Safety Code.

SECTION III. GRANT NON-EXCLUSIVE.

Nothing herein shall be construed as giving to the Company any exclusive privilege.

SECTION IV. FAVORED NATIONS.

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Company to enter into the City's streets and public ways for the purpose of construction or operating a Cable System or providing Cable Service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION V. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.

A. Conditions of Street Occupancy—All transmission and distribution structures, poles, other lines and equipment installed or erected by the Company pursuant to the terms thereof shall be so located as to cause a minimum of interference with the proper uses of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said public ways.

B. Restoration—If, while installing, repairing or maintaining its facilities, the Company disturbs the surface of any right-of-way or public place, the Company shall restore the surface to as good a condition as before the disturbance and maintain same to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

C. Specifications and Standards—All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable City, State and Federal specifications and standards.

D. Relocations of Facilities at Request of City—Upon its receipt of reasonable advance notice, but in no event less than three (3) working days advance notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the Company when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City.

E. Relocation at Request of Third Party—The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Company, making such payment in advance; and (b) the Company is given not less than five (5) working days advance written notice to arrange for such temporary wire changes.

F. Trimming of Trees and Shrubbery—The Company shall have the authority to trim trees or other natural growth overhanging any of its cable system service area so as to prevent branches from coming in contact with the Company's wires, cables or other equipment. The Company shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by Company. Company agrees either to use its own employees to trim trees [or] to use tree trimmers licensed by the City. Such replacement shall satisfy any and all obligations Company may have to the City and the property owner pursuant to the terms of this section.

G. Safety Requirements—Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulation. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

H. Aerial and Underground Construction—In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities are underground, the Company likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Company's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities are both aerial and underground, Company shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require Company to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this

section, in the event that all of the transmission or distribution facilities of the respective public utilities are placed underground after the effective date of this Ordinance, Company shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

I. Required Extensions of Service—The cable system as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Company hereby is authorized to extend the cable system as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Company shall receive a request for service from at least five (5) subscribers within 1320 cable bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for the system extension, other than the usual connect fees for all subscribers; provided that such extension is technically feasible.

J. Subscriber Charges For Extension of Service—No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscribers, or a density of less than five (5) subscribers per 1320 cable bearing strand feet of trunk or distribution cable, cable service of other service may be made available on the basis of a capital contribution in aid on construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Company and subscribers in the area in which cable service may be expanded, Company will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential subscribers per 1320 cable bearing strand feet of its trunks or distribution cable, and whose denominator equals five (5) subscribers. Potential subscribers will bear the remainder of the construction and other costs on a pro-rata basis. Company may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance.

K. Service to Public Buildings—The Company shall provide without charge one (1) outlet of basic service to each of the City's office building(s), fire station(s), police station(s), and public school building(s) that are passed by its Cable System.

The outlets of basic service shall not be used to distribute or sell cable services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Company harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section V (j), the Company shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including but not limited to, labor and materials. Upon request of Company, the building owner also may be required to pay the service fees associated with the provision of basic service and the additional outlets relating thereto.

L. Emergency Override—In the case of any emergency or disaster, the Company shall, upon request of the City, make available its facilities for the City to provide emergency information and instructions during the emergency or disaster period. The City shall hold the Company, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the City.

SECTION VI. CASH CONSIDERATION.

A. In consideration for the grant of Franchise and right to use public ways within the City, the Company shall pay a cash consideration in an amount equal to four percent (4%) of Gross Revenues received by Company from the operation of the Cable System. Payments shall be paid monthly not later than forty-five (45) days after the end of the month for the revenues received during that month for the entire period this franchise is in force. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local 5 improvements and except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "Gross Revenues" herein. In the event the franchise payment due is not made on or before the specified date, interest would be charged daily from such date as established by the Chase Manhattan Bank located in New York, New York. To assure proper payment as herein provided, the books of the Company

which are necessary to monitor compliance with the terms of this section shall be open to inspection by the City at all reasonable times. Each payment shall be accompanied by a brief report from a representative of Company showing the basis for the computation. The City, after 60 days advance written notice to Company, may increase the franchise fee to up to five percent (5%) of Gross Revenues. In no event shall the franchise payments required to be paid by Company exceed five percent (5%) of Gross Revenues received by Company in any twelve (12) month period.

B. The City may not regulate the rates for the provision of cable service and other services, including but not limited to, ancillary charges related thereto, except as expressly provided herein and except of authorized pursuant to federal and state law including but not limited to, the Cable Act and FCC Rules and Regulation relating thereto. From time to time, Company has the right to modify its rates and charges including but not limited to, the implementation of additional charges and rates; provided, however, that Company shall give notice to the City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

C. Renewal of Franchise—City and Company agree that any proceedings undertaken by the City that relate to the renewal of the Company's franchise shall be governed by and comply with the provisions of 47 U.S.C. § 546, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

SECTION VII. INSURANCE REQUIREMENT AND INDEMNIFICATION.

A. Insurance Requirements—Company shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, the following types of liability insurance:

1. Workers' Compensation.
2. Commercial General Liability: including Products and Completed Operations, Advertising Injury, Explosion Hazard, Collapse Hazard, Underground Hazard, and Contractual Liability with minimum limits of $1,000,000.
3. Commercial Automobile Liability: including non-owned and hired care coverage with minimum limits of $1,000,000.
4. Umbrella Liability Policy with minimum limits of $1,000,000.

The City shall be named as an Additional Insured. The Company agrees to provide evidence of such insurance to the City Manager. Such evidence shall be a copy of the Certificate of Insurance.

B. Indemnification—The Company agrees and shall save the City and its agents and employees, harmless from and against claims, damages, losses and expenses, including attorney's fees sustained by the City on account of any loss, judgment, execution or judgment, claim or demand by another individual, corporation or entity whatsoever arising out of the Company's construction, operation or maintenance of its cable system, including but not limited to, copyright infringements.

SECTION VIII. ANNEXATIONS.

This franchise shall apply to any property annexed to the City as provided by law, upon such annexation.

SECTION IX. STANDARDS OF SERVICE.

A. Performance Evaluations—The Company shall hold scheduled performance evaluation sessions within thirty (30) days of the first, third, sixth, ninth, and twelfth anniversary dates of the Company's award of the franchise and as may be required by Federal and State law. All evaluation meetings shall be open to the public and announced in a local newspaper of general circulation at least ten (10) days prior to the meeting. Topics which may be discussed at any scheduled evaluation session may include but are not limited to, service, rate structures, services provided, programming offered, customer complaints, privacy, and company rules. Company shall submit to City a written report detailing the comments had as such evaluation sessions and any actions to be taken by Company in response to said comments.

B. Initial Installation—Within five (5) working days after receiving a request for cable service, the Company shall make the necessary installation for persons who indicate their willingness to subscribe to the cable system. At any time the installation exceeds five (5) working days, the Company will implement a contingency plan to include but not be limited to, overtime authority or the hiring of independent contractors.

C. Service Standards -The Company shall maintain the following service standards:

1. The Company shall put, keep, and maintain all parts of the system in good condition throughout the entire Franchise.

2. The Company shall render efficient service, make repairs promptly, and interrupt only for good cause and for the shortest time possible. Such interruptions, insofar as possible and practicable, shall be preceded by notice and shall occur during periods of minimum system use.

3. Company shall, at all times, keep the City and the subscribers informed of its programming lineups, and all proposed changes in the programming lineup shall be reported to the City and the subscribers at least thirty (30) days prior to the proposed implementation where Company has been provided at least thirty (30) days notice.

4. Company shall pass through all closed-captioning signals received by the system for the hearing impaired as required by FCC rules and regulations.

D. Construction and Technical Standards—The Company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards. In addition, the Company shall provide the City with a written report of the result of the Company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

SECTION X. CUSTOMER COMPLAINTS.

A. The Company shall provide cable communication services throughout the entire franchise area pursuant to the provisions of this Ordinance and Franchise Agreement and shall keep a current file of all complaints received by the Company for at least the three (3) most recent years. During the entire life of the franchise, the Company shall maintain a file of complaints as set forth above, which file shall be available for inspection by the City, subject to all applicable laws including and not limited to the Cable Act, at the local office of the Company during regular business hours.

B. The Company shall maintain a central office with the City, which shall be open during all usual business hours, and have a publicly listed telephone and be so operated with adequate line capability that complaints and requests for repairs or service adjustments be received on a twenty-four (24) hour basis, seven (7) days a week. In addition, subject to constraints imposed by Force Majeure events over which the Company has no control, the Company shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for

service within eight (8) business hours after receiving a complaint or request. No charge shall be made to the subscriber for this service unless such maintenance or repairs are required as a result of damage caused by the subscriber.

SECTION XI. EDUCATIONAL AND GOVERNMENTAL ("EG") ACCESS CHANNELS.

A. Upon request of the City supported by reasonable community-based needs and interests, Company shall provide one (1) channel for non-commercial educational and/or governmental programming in accordance with applicable law. Any EG channel shall be on the Company's basic service tier or on such tier as the Company shall determine in its discretion so long as the tier of service selected by the Company is available to those subscribers that desire to view the EG channel. Company will cooperate with City in determining capital and operational costs of such EG channel. After determination of costs and usage of EG channel, City shall promulgate rules and procedures for Company's use of such channel capacity when it is not being used for the purpose designated.

B. Company shall incur capital costs up to $8,000 for the initial EG access channel requested in writing by City in accordance with applicable law. Capital costs are those costs of activating an EG access channel, including purchasing cameras, decks, lighting, editing equipment and related infrastructure. Upon the written request from City, Company shall provide a second EG channel to the City and shall incur capital costs up to $8,000 for the second EG-access channel, provided, however, such additional EG channel and the payment of any additional capital costs by Company shall occur only when the initial EG access channel shall be fully utilized for non-commercial, non-duplicating educational and/or governmental programming.

SECTION XII. CABLE SYSTEM UPGRADES AND IMPROVEMENTS.

A. Company shall complete an upgrade of the Cable System to 860 MHz capacity no later than December 31, 2007. The upgrade will accommodate digital video, additional programming services, an enhanced back-up powering system and will support addressability and/or comparable technology. The upgraded system will have the capacity of at least eighty (80) analog channels and shall have the capacity sufficient to provide Subscribers with a minimum of one-hundred fifty (150) video programming services and shall be capable of supporting HDTV and high-speed cable Internet services.

B. The upgrade completion schedule is as follows:

45% of the homes in Hobbs shall be completed by December 31, 2005;

75% of the homes in Hobbs shall be completed by December 31, 2006; and

100% of the homes in Hobbs shall be completed by December 31, 2007.

C. High-speed Internet services will be available in the upgraded areas by January 31, 2006, and HDTV will be available in the upgraded areas by January 31, 2007.

SECTION XIII. TERMINATION.

A. If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from City to Company of such non-payment (which period of thirty (30) days commences with the day after receipt of such notice), this franchise may be terminated by the City.

B. Notice of Violation—In the event that the City believes that the Company has not complied with any other terms of the franchise, it shall notify Company in writing of the exact nature of the alleged non-compliance.

C. Company's Right to Cure or Respond—Company shall have thirty (30) days from receipt of the notice described in Section XI (b) to: (1) respond to the City contesting the assertion of non-compliance, or (2) to cure such default or, in the event by the nature of death, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

D. Enforcement—Subject to applicable federal and state law, in the event the City determines the Company is in default of any provisions of the franchise, the City may:

1. Foreclose on all or any part of any security provided under this franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such manner and in such amount as the City reasonably determines is necessary to remedy the default;

2. Commence an action at law for monetary damages or seek other equitable relief;

3. In the case of a substantial default of a material provision of the franchise, declare the Franchise Agreement to be revoked; or

4. Seek specific performance of any provision, which reasonable lends itself to such remedy, as an alternative to damages.

The Company shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the City to enforce prompt compliance.

E. Force Majeure — The Company shall not be held in default or non-compliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, acts of terrorism, power outages, or other events reasonably beyond its ability to control. Company shall use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

SECTION XIV. ASSIGNMENT.

Company's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered without the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Company in the franchise or cable system in order to secure indebtedness.

SECTION XV. SUCCESSORS AND ASSIGNS.

The rights, powers, limitation, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION XVI. TERM.

The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law and shall continue in force and effect for a period of fifteen (15) years thereafter, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

SECTION XVII. FRANCHISE AS CONTRACT.

Upon its approval by the City and its acceptance by Company, this agreement shall be deemed to constitute a contract by and between Company and City.

SECTION XVIII. MISCELLANEOUS PROVISIONS.

A. Preemption—If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist,

B. Reservation by City—The City reserves the right to regulate the rates for, service and programming of the Company for cable service if any subsequent state or federal legislative act should confer such a right to the City, provided that such does not materially alter or interfere with the existing rights of the Company herein.

C. Actions by City—In any action by the City or representative thereof, mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

D. Notice—Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Company shall be in writing, and shall be deemed to have been duly given to the required part five (5) working days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U. S. Postal Service.

The notices or responses to the City shall be addressed as follows:

City Manager
City of Hobbs
300 North Turner
Hobbs, New Mexico 88240

The notices or responses to the Company shall be addressed as follows:

US Cable of Costal-Texas, L.P.
Attention: Legal Department
611 West Avenue A
Seminole, Texas 79360

The City and the Company may designate such other address or addresses from time to time by giving notice to the other.

E. Description Heading—The captions to section contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

F. Severability—If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof.

SECTION XVIX. PUBLICATION COSTS.

This ordinance shall be published as provided by law and the cost thereof shall be paid by the Company upon presentation of an invoice for publication and proof of publication by the City.

SECTION XX. REPEALER.

Once in effect, this ordinance shall repeal Ordinance No. _____ in its entirety.

SECTION XXI. ACCEPTANCE AND EFFECTIVE DATE

The Company shall have sixty (60) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, the ordinance shall take effect and be in force from and after the date of its passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED, PASSED AND ADOPTED this _____ day of _____, 2005, to become effective January 1, 2006, by the following vote:

AYES: _____

;NOES: _____

ABSENT: _____

_____
MONTY D. NEWMAN, MAYOR

ATTEST:

_____

JAN FLETCHER, CITY CLERK

ACCEPTANCE

WHEREAS, the City Commission of the City Hobbs, New Mexico, did on the _____ day of _____, 2005, enact an Ordinance entitled:

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO US CABLE OF COSTAL-TEXAS, L.P., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE, LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY "PUBLIC WAY") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF FIFTEEN (15) YEARS, TO (1) ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE TRANSMISSION AND DISTRIBUTION OF ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING INTO, IN, WITHIN, FROM, ACROSS AND THROUGH THE CITY; AND (2) SUPPLY AND FURNISH TO THE CITY AND ITS INHABITANT AND TO ANY OTHER PERSON OR PERSONS, FIRMS OR CORPORATIONS, WHETHER LOCATED WITHIN OR WITHOUT THE CITY, ONE-WAY TRANSMISSION OF VIDEO PROGRAMMING FOR ANY OTHER PURPOSE OR PURPOSES FOR WHICH ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING MAY BE USED. THIS ORDINANCE REPEALS ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

and

WHEREAS, said Ordinance was on the _____ day of _____, 2005, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Clerk.

NOW, THEREFORE, in compliance with the terms of said Ordinance as enacted, approved, and attested, US Cable of Costal-Texas, L.P., hereby accepts said Ordinance and files this, its written acceptance, with the City Clerk of the City of Hobbs, New Mexico, in her office.

DATED this 20th day of December, 2005, subject to applicable federal, state, and local law.

ATTEST: US CABLE OF COASTAL-TEXAS, L.P.

_____ BY: _____

_____ _____

(Title) (Title)

Acceptance filed in the office of the City Clerk of Hobbs, New Mexico, _____ day of _____, A.D._____.

_____

CITY CLERK

CITY OF HOBBS

RESOLUTION NO. 5762

RESOLUTION OF THE CITY OF HOBBS
APPROVING THE TRANSFER OF THE CABLE FRANCHISE

WHEREAS, US Cable of Coastal-Texas, L.P. ("Franchisee") owns, operates and maintains a cable television system (the "System") in the City of Hobbs ("Franchise Authority") pursuant to a valid franchise agreement or similar authorization (the "Franchise");

WHEREAS, Baja Broadband, LLC ("Baja") entered into an Asset Purchase Agreement dated as of August 9, 2011 (the "Agreement") with Franchisee, pursuant to which the Franchisee proposes to sell and assign To Baja the System and the Franchise and certain assets related thereto (the "Transfer");

WHEREAS, Franchisee and Baja have requested consent of the Franchise Authority to the Transfer, have filed an FCC Form 394 with the Franchise Authority, and have provided all information required by applicable law (collectively, the "Transfer Application"); and

WHEREAS, the Franchise Authority has reviewed the Transfer Application and investigated the qualifications of Baja and finds it to be a suitable transferee.

NOW THEREFORE, BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:

SECTION 1. The Franchise Authority hereby consents to the Transfer effective as of the date of the closing of the transactions contemplated under the Agreement (the "Closing Date").

SECTION 2. This Resolution shall become effective immediately upon passage by the Franchise Authority.

SECTION 3. The Franchise authority hereby releases Franchisee, effective as of the Closing Date, from any and all obligations and liabilities under the Franchise arising from and after the closing Date and Baja shall be responsible for any and all obligations and liabilities under the Franchise arising from and after the Closing Date.

SECTION 4. This Resolution shall have the force of a continuing agreement with Franchisee and Baja, and Franchise Authority shall not amend or otherwise alter this Resolution without the consent of Franchisee and Baja.

PASSED ADOPTED AND APPROVED this 5th day of December, 2011.

/s/_____
GARY DON REAGAN, Mayor

ATTEST:
/s/_____
JAN FLETCHER, City Clerk

Telecommunications Franchise

ORDINANCE NO. 862

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO LEACO RURAL TELEPHONE COOPERATIVE, INC. ("LEACO"), A NEW MEXICO NONPROFIT COOPERATIVE ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY CALLED "PUBLIC AREAS") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE RENDITION OF TELEPHONE AND OTHER COMMUNICATIONS SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONG DISTANCE TELEPHONE BUSINESS IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY

WHEREAS, Leaco is now and has been engaged in the business of supplying and furnishing to portions of Lea County, Eddy County, and Chaves County, New Mexico, and their inhabitants, and to any other person or persons, firms, or corporations, located without the City, telephone and other communication services; and

WHEREAS, the City of Hobbs has not previously granted to said Company a franchise granting the privilege to enter upon and use the streets, avenues, boulevards, alleys, highway, sidewalks, bridges, and other public areas of the City to operate Leaco's facilities, and wishes to grant a franchise governing future operations of said Company in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that:

SECTION I. DEFINITIONS.

For the purpose of this ordinance, the following terms shall have the meanings given herein:

A. "City" refers to the City of Hobbs, New Mexico;

B. "Company' refers to Leaco Rural Telephone Cooperative, Inc., its successors and assigns;

C. "Commission" refers to the City Commission of the City of Hobbs;

D. "Gross receipts" shall mean all receipts derived by the Company from local exchange service rates contained in Section 1 for Local Exchange Services of its approved Competitive Intrastate Telecommunications Local Exchange and Access Service Rates and Charges Listing, charged customers within the corporate limits of the City; provided, however, that "gross receipts" shall not mean, nor include, any federal and state excise taxes, gross receipts taxes, sales taxes, surcharges, franchise fees, or other similar charges, nor shall it mean, nor include, revenue from non-regulated services unless such non-regulated service is essential to providing local exchange service as described above and such non-regulated service is provided via a physical line or cable located in or upon one or more public areas of the City.

SECTION II. GRANT OF AUTHORITY.

The Company hereby is granted a franchise to erect, construct, equip, extend, alter, maintain, repair, replace, remove, and operate its equipment and facilities on, along, across, over, in, and under the streets, alleys, easements, and public ways of the City now in existence or as may be changed from time to time, and other public places, areas, and grounds. This grant includes all works, systems, plants, poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers, and other distribution and transmission instrumentalities, facilities and appurtenances necessary or proper for the transmission and distribution of telephone and other communication services into, in, within, from, across, and through the City. Consent of the City for the use by the Company of public grounds and places other than streets, alleys, boulevards, highways, sidewalks, bridges,

easements, and public ways for its facilities installed after the effective date of this ordinance will be in the form of an easement, with the City as Grantor and the Company as Grantee.

SECTION III. GRANT NON-EXCLUSIVE.

Nothing herein shall be construed as giving to the Company any exclusive privilege.

SECTION IV. CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.

A. Location—All telephone and communication lines and appurtenant equipment for the purpose of installing, maintaining and operating telephone and communication lines, and appurtenant equipment necessary to deliver and sell telephone and communication services to persons, firms, and corporations, including the general public, for telephone and communication purposes installed by the Company in public rights-of-way shall be located so as to cause minimum interference with other facilities and proper uses of the rights-of-way. All above-ground fixtures shall be placed so as to not interfere with the usual travel on said rights-of-way. Underground facilities may be located under the traveled portion of rights-of-way, provided the surface of such right-of-way is restored as hereunder provided.

B. Restoration - If, while installing, repairing, or maintaining its facilities, the Company disturbs the surface of any right-of-way or public place, the Company shall restore the disturbed portion of the surface to as good a condition as before the disturbance and maintain the disturbed portion of the surface to the same level as that of adjacent land to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway, or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway, or public place shall be encumbered for a longer period than shall be necessary to execute the work.

C. Specifications, Standards, and Testing - All fixtures installed, repaired, maintained, or operated, shall be done so in compliance with all applicable City, State, and Federal specifications and standards. Within thirty (30) days following completion of any construction, the Company shall provide copies of tests on any subgrade, base course, asphalt pavement, concrete, trench backfill, or other items removed and replaced during the course of construction and restoration activities. All construction, testing requirements, and standards shall be in compliance with

the latest edition of the APWA standard specifications for public works construction. All compliance testing shall be performed by a professional engineering testing firm at the cost of the Company.

D. Relocation of Facilities - In the event that any time during the period of this franchise, the City shall elect to alter or change the grade or location of any publicly owned utility, street, easement, alley, or other public way for the purpose of joint utilities or street improvement, the Company, upon reasonable notice by the city of the necessity, and after due consideration being given to Company's seasonal load requirements, shall remove, relay, or relocate, at Company's determination, its telephone and communication lines and other related fixtures on the City's right-of-way at its own cost and expense.

E. Tree Trimming - That the right, license, privilege, and permission is hereby granted to the Company, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks, and public places of the City, so as to prevent the branches of such trees from coming in contact with the wires or cables of the Company, and when so ordered by the City, said trimming shall be done under supervision and direction of the City or of any City official to whom said duties have been or may be delegated.

F. Indemnity by Company - The City shall not be liable or responsible for, and shall be saved and held harmless by the Company from, any and all claims and damages of any kind (including injury to or death of any person or persons and damage to or loss of property) arising out of or attributed to the erection, construction, or operation of any or all of the plants, systems, and works of Company. Company agrees to provide and pay for Commercial General Liability Insurance with limits normally provided in other operations of this type by Company. The City shall be named as an Additional insured. Company agrees to provide evidence of such insurance to the City Manager. Such evidence shall be a copy of the Certificate of Insurance.

SECTION V. CASH CONSIDERATION.

In consideration for the grant of franchise and the right to use public rights-of-way within the City, the Company shall pay, quarterly, a cash consideration in an amount equal to two and three-tenths percent (2.3%) of the "gross receipts", as defined above in Section I (D), of the Company from the sale of telephone and communication services to consumers within the corporate limits of the City of Hobbs. The first payment hereunder shall be calculated from the date of acceptance of the

ordinance through the last day of the first full calendar quarter following acceptance of this Ordinance, and shall be made within thirty (30) days following the last day of the period for which the payment is calculated, and, thereafter, payment for each calendar quarter shall be due and payable on or before the last day of the calendar month following the close of the calendar quarter for which the payment is calculated. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges, or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local improvements and except any occupation or other tax assessed on Company or its properties, except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "gross receipts" herein. To assure proper payment as herein provided, the books of the Company shall be open to inspection by the City at all reasonable times.

SECTION VI. ANNEXATIONS.

This franchise shall apply to any property properly annexed to the City as provided by law, upon such annexation.

SECTION VII. STANDARDS OF SERVICE.

A. The New Mexico Public Regulation Commission has general and exclusive power and jurisdiction to regulate and supervise Company in respect to its rates and service regulations, all in accordance with provisions of the Rural Telecommunications Act of New Mexico. A copy of Company's rates and service regulations are on file for public reading at the office of Leaco during normal working hours.

B. If at any time the Rural Telecommunications Act of New Mexico is amended or repealed, with the effect of such action being the deletion of standards of service in the City as are now in effect and no successor is named by the State of New Mexico, the City reserves the right to establish standards of service consistent with those now in effect in the City or at the time of any such amendment or repeal. If standards of service are established by the City and the City becomes the regulative authority for such standards of service, the costs (in excess of established costs) for such standards of service will be borne by the rate payers of the City.

SECTION VIII. TERMINATION.

If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from City to Company of such non-payment (which period of

thirty (30) days commences with the day after receipt of such notice), this franchise may be terminated by the City. If the Company substantially fails to comply with any of the other material provisions of this franchise and fails to cure same or is unable to provide justification for such non-compliance within sixty (60) days after it has received written notice from the City claiming such non-compliance with any of the material terms and provisions of this franchise, then City shall give Company an additional written notice that this franchise will be terminated effective ninety (90) days after receipt of said notice to Company, unless Company corrects such non-compliance within said period of time. If the City and Company disagree over whether Company has substantially failed to comply with any of the material provisions of this franchise or has failed to cure an alleged non-compliance, the franchise shall continue until agreement is reached between the City and Company resolving the matter or until the matter has been litigated through the courts to final judgment. Non-compliance by Company of any terms and provisions of this franchise due to force majeure or any cause beyond its control does not constitute reason for termination of this franchise.

SECTION IX. COOPERATIVE MEMBERSHIP.

The Company may require membership and the payment of an equity as determined by its Board of Directors as a condition precedent to the furnishing of service to its patrons and may adopt reasonable By-Laws, rules, and regulations in the conduct of its business affairs, and observance of the same may be required of the membership of the Company.

SECTION X. ASSIGNMENT.

The rights of the Company hereunder shall not be assignable without first giving the City at least thirty (30) days notice prior to filing with the New Mexico Public Regulation Commission of the Company's intention to assign its franchise rights hereunder. The company shall assist the City Manager in providing information which reflects the financial ability (e.g. financial audit) and the management ability (e.g. experience and resume of proposed management) of its proposed assignee to operate a telephone utility. The aforesaid thirty (30) days notice shall not commence to run until Company has initiated good faith efforts to provide the assistance or information as requested by the City Manager.

SECTION XI. SUCCESSORS AND ASSIGNS.

The rights, powers, limitations, duties, and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION XII. TERM.

The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law and shall continue in force and effect for a period of twenty-five (25) years thereafter, or until such time as another franchise by and between the parties hereto is granted and accepted, whichever occurs first.

SECTION XIII. PUBLICATION COSTS.

This ordinance shall be published as provided by law and the cost thereof shall be paid by the Company upon presentation of an invoice for publication and proof of publication by the City.

SECTION XIV. SEPARABILITY.

Should any part or portion hereof be declared invalid, void, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct from the balance and such declaration shall not affect the validity of the remaining portions hereof.

SECTION XV. ACCEPTANCE AND EFFECTIVE DATE.

The Company shall have sixty (60) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the City Clerk, and upon such acceptance being filed, this ordinance shall take effect and be in force from and after the date of its passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED, PASSED, AND ADOPTED this 6th day of March, 2000.

/s/_____
JOSEPH D. CALDERON, Mayor

ATTEST:

_____
JAN FLETCHER, City Clerk

ACCEPTANCE

WHEREAS, the City Commission of the City of Hobbs, New Mexico, did on the 6th day of March, 2000, enact an ordinance entitled:

AN ORDINANCE OF THE CITY OF HOBBS, NEW MEXICO, GRANTING TO LEACO RURAL TELEPHONE COOPERATIVE, INC. ("LEACO"), A NEW MEXICO NON-PROFIT COOPERATIVE ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE LICENSE, RIGHT-OF-WAY AND PRIVILEGE TO ENTER UPON AND USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY (COLLECTIVELY CALLED "PUBLIC AREAS") WITHIN THE CITY LIMITS OF THE CITY AS THEY NOW EXIST OR AS THEY MAY BE CHANGED FROM TIME TO TIME, FOR A PERIOD OF TWENTY-FIVE'(25) YEARS TO ERECT, CONSTRUCT, EQUIP, EXTEND, ALTER, MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE IN, UNDER, UPON, WITHIN, OVER, ABOVE, ACROSS AND ALONG PUBLIC AREAS, ALL WORKS, SYSTEMS, PLANTS, POLES, POLE LINES, TOWERS, DISTRIBUTION LINES, TRANSMISSION LINES, WIRES, GUYS, CABLES, CONDUITS, TRANSFORMERS AND OTHER DISTRIBUTION AND TRANSMISSION INSTRUMENTALITIES, FACILITIES AND APPURTENANCES NECESSARY OR PROPER FOR THE RENDITION OF TELEPHONE AND OTHER COMMUNICATIONS SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONG DISTANCE TELEPHONE BUSINESS IN, WITHIN, FROM, ACROSS, AND THROUGH THE CITY.

and

WHEREAS, said ordinance was, on the 6th day of March, 2000, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Clerk;

NOW, THEREFORE, in compliance with the terms of said ordinance as enacted, approved, and attested, Leaco Rural Telephone Cooperative, Inc., hereby accepts said ordinance and files this, its written compliance, with the City Clerk of the City of Hobbs, New Mexico, in her office.

DATED this 6th day of April, 2000.

Leaco Rural Telephone Cooperative, Inc.
By /s/_____
John E. Smith, Vice President and
General Manager

Attest:

_____

Secretary

Acceptance filed in the office of the City Clerk of Hobbs, New Mexico, this 13th day of April, 2000.

/s/_____

JAN FLETCHER CITY CLERK

RESOLUTION NO. 3631
A RESOLUTION APPROVING THE TRANSFER OF THE TELEPHONE AND OTHER COMMUNICATIONS FRANCHISE

WHEREAS, GTE Southwest Incorporated ("GTE") is duly authorized to operate and maintain a telephone and other communications system (the "System") in the City of Hobbs, New Mexico ("Franchise Authority") pursuant to Ordinance No. 794 adopted on July 2, 1990, and effective on July 13, 1990, (the "Franchise"); and

WHEREAS, Valor Telecommunications of New Mexico, LLC ("Valor") has purchased the assets of GTE's systems in the City of Hobbs, New Mexico, and agrees to fulfill the obligations of GTE under the Franchise; and

WHEREAS, GTE has agreed to transfer the assets of the System, including all its right, title and interest in the Franchise, to Valor subject to, among other conditions, any required approval of the Franchise Authority with respect thereto; and

WHEREAS, the parties have requested consent by the Franchise Authority to the transfer of the System and the Franchise to Valor, to the extent that such consent is required under the Franchise, in accordance with the requirements of the Franchise;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Franchise Authority hereby consents to and approves the transfer of the System and the Franchise to Valor to the extent that such consent is required by the terms of the Franchise and applicable law, and the assumption by Valor of the obligations of GTE under the Franchise, subject to applicable law.

Section 2. Valor may transfer the Franchise, System or assets or control relating thereto, to any entity controlling, controlled by or under common control of Valor.

Section 3. The Franchise Authority hereby consents to and approves the assignment, mortgage, pledge or other encumbrance, if any, of the Franchise, System or assets relating thereto, or of the interests in the permitted holder thereof, as collateral for a loan.

Section 4. This Resolution shall be deemed effective upon the closings of the transactions described above. Effective as of the date hereof, this Resolution shall have the force of a continuing agreement with Valor and shall not be amended or otherwise altered without the consent of Valor.

PASSED, ADOPTED AND APPROVED this 18th day of December, 2000.

/s/_____
JIMMY E. WOODFIN, Mayor

/s/_____
JAN FLETCHER, City Clerk

ORDINANCE NO. 1067

ZIA NATURAL GAS COMPANY FRANCHISE AGREEMENT

AN ORDINANCE GRANTING TO ZIA NATURAL GAS COMPANY, A DIVISION OF NATURAL GAS PROCESSING CO., A WYOMING CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE IN THE CITY OF HOBBS, LEA COUNTY, STATE OF NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, TO USE THE STREETS, HIGHWAYS, RIGHTS OF WAY AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A NATURAL GAS DISTRIBUTION SYSTEM, FOR A PERIOD OF FIFTEEN (15) YEARS AND PRESCRIBING TERMS AND CONDITIONS HEREIN CONTAINED.

WHEREAS, THE CITY OF HOBBS HAS PREVIOUSLY GRANTED TO SAID COMPANY A FRANCHISE TO OPERATE SAID COMPANY WITHIN THE CITY AND WISHES TO GRANT ANOTHER FRANCHISE GOVERNING FUTURE OPERATIONS OF GAS FACILITIES IN THE CITY BY SAID COMPANY.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO, THAT:

Section 1. Definitions used for the purposes of this ordinance are used as follows:

(a) "City" or "Grantor" means the City of Hobbs, New Mexico;

(b) "Company" or "Grantee" means Zia Natural Gas Company, a division of Natural Gas Processing Company, a Wyoming Corporation, its successors and assigns;

(c) "Commission" means the City Commission of the City of Hobbs;

(d) "Gross Receipts" means all receipts derived by the Company from the sale of gas to residential and commercial customers within the corporate limits of the City. NOTE: Commercial customers as used herein shall not be construed to include any political subdivisions of Federal, State or Local government or any non-profit organization exempt from the gross receipts tax by the State of New Mexico or any industrial customer as defined by the rules and regulations of the New Mexico Public Service Commission.

Section 2. The CITY OF HOBBS (hereinafter referred to as "Grantor"), hereby grants unto ZIA NATURAL GAS COMPANY (hereinafter referred to as "Grantee"),

it successors and assigns, the authority, license, power, and privilege to use the streets, highways, and public grounds of said Grantor to construct, operate, and maintain a natural gas distribution system within the CITY OF HOBBS, LEA COUNTY, State of New Mexico, as now or hereafter constituted. Consent of the City Commission for the use by the Grantee of public grounds and places other than streets, highways, and public grounds for its facilities installed after the effective date of this ordinance will be in the form of an easement, with the City as Grantor and the Company as Grantee. This franchise shall apply to any property properly annexed to the City as provided by law, upon such annexation. However, nothing herein shall be construed as giving the Grantee any exclusive privilege. The Grantor reserves the right to grant a similar use of said streets, highways, and public grounds to any person at any time during the period of this franchise.

Section 3. The franchise granted herein shall take effect and be enforced from and after the effective date of this ordinance as established by law, provided Grantee timely files the required "Acceptance" attached herein, and shall continue in force and effect for a period of fifteen (15) years thereafter, or until such time as another franchise is granted and accepted, whichever first occurs. The franchise may be renewed for additional terms and upon such terms and conditions as may be mutually acceptable to Grantor and Grantee.

Section 4. In consideration for the grant of franchise and the right to use public rights-of-way within the City, the Grantee shall pay a cash consideration in an amount equal to two percent (2%) of the "gross receipts," as defined in Section 1(d), of the Company from the sale of gas to consumers within the corporate limits of the City of Hobbs. Payments shall be paid quarterly on or before the last day of April, July, October and January for the entire period this franchise is in force. The payment of this amount shall be in lieu of any and all licenses, taxes, fees, charges or other excises or extrications on the Company or its properties, except for general property taxes and special assessments for local improvements and except any occupation or other tax assessed on Company on other non-utility revenues derived from within the City and not included in the definition of "gross receipts" herein.

Section 5. The conditions of right-of-way occupancy shall be as follows:

(a) Location: All pipelines and appurtenant equipment for the purpose of laying, maintaining and operating pipelines and appurtenant equipment necessary to deliver and sell gas to persons, firms and corporations, including the general public, for heat, light, and power purposes installed by the Grantor in public rights-of-way shall be located so as to cause minimum interference

with other facilities and proper uses of the rights-of-way. All above-ground fixtures shall be so placed as to not interfere with the usual travel on said rights-of-way. Underground facilities may be located under the travelled portion of rights-of way provided the surface of such right-of-way is restored as hereunder provided.

(b) Restoration: If, while installing, repairing or maintaining its facilities, the Grantee disturbs the surface of any right-of-way or public place, the Grantee shall restore the surface to as good a condition as before the disturbance and maintained to the satisfaction of the City Commission or of any City official to whom such duties have been or may be delegated, for one (1) year from the date the surface of said street, highway, right-of-way, or public ground is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the Grantor. Grantee shall perform restoration at its own cost and in accordance with all ordinances now in effect or which may thereafter be passed. Grantee shall obtain all permits that the Grantor may require, which shall be issued at no cost to the Grantee. No such street, highway, right of way, or public ground shall be encumbered for a longer period than shall be necessary to execute the work.

(c) Specifications and Standards: All natural gas facilities shall be constructed, operated, and maintained in a proper and workmanlike manner according to accepted industry standards and all applicable government rules and regulations. All fixtures installed, repaired, maintained or operated shall be done so in compliance with all applicable City, State, and Federal specifications and standards.

(d) Relocation of Facilities: In the event that any time during the period of this franchise, the Grantor shall elect to alter or change the grade or location of any publicly owned utility, street, easement, alley or other public grounds for the purpose of sewer or street improvement, the Grantee, upon reasonable notice by the Grantor of the necessity, and after due consideration being given to Grantee's seasonal load requirements, shall remove, relay or relocate, at Grantee's determination, its underground pipelines, manholes and other related fixtures at its own cost and expense.

(e) Insurance: The Grantee shall keep in force for itself and its officers, agents, and employees, public liability and property insurance containing terms and provisions and in amounts acceptable to the Grantor. Further, such insur-

ance policy or policies shall name the Grantor as an additional insured. Grantee agrees to provide evidence to Grantor, annually and at any other time upon request, that such insurance is in force, provided, however, Grantor shall keep the amounts of such insurance confidential, unless it is directed to do otherwise by final Court Order issued by a Court having authority to issue such an Order.

(f) Indemnification: The Grantee agrees to hold Grantor harmless from and indemnify them against, any and all liability, claim, or loss occasioned by or resulting from, any and all act(s) of the Grantee, its agents, employees or contractors. The Grantor will notify the Grantee within a reasonable time after any claim, liability or loss is made or submitted to the Grantor from any act of the Grantee, its agents, employees or contractors.

Section 6. If any payment herein provided to be paid is not paid when due after thirty (30) days written notice from Grantor to Grantee of such non-payment (which period of 30 days commences with the day after receipt of such notice), this franchise may be terminated by the Grantor. If the Grantee substantially fails to comply with any of the other provisions of this franchise and fails to cure same or is unable to provide justification for such non-compliance within sixty (60) days after it has received written notice from the Grantor claiming such non-compliance with any of the terms and provisions of this franchise, then Grantor shall give Grantee an additional written notice that this franchise will be terminated effective ninety (90) days after receipt of said notice to Grantee, unless Grantee corrects such non-compliance within said period of time. If the Grantor and Grantee disagree over whether Grantee has substantially failed to comply with any of the other provisions of this franchise or has failed to cure an alleged non-compliance, the franchise shall continue until agreement is reached between the Grantor and Grantee resolving the matter or until the matter has been litigated through the Courts to final judgment. Non-compliance by Grantee of any terms and provisions of this franchise due to force majeure or any cause beyond its control does not constitute reason for termination of this franchise.

Section 7. This franchise may not be transferred within the first five (5) years, and after the first five (5) years, only with the written consent of the Grantor, however, consent will not be unreasonably withheld. The rights of the Grantee hereunder shall not be assignable without first giving the Grantor at least thirty (30) days notice prior to filing with the New Mexico Public Service Commission of the Grantee's intention to assign its franchise rights hereunder. The Grantee shall cause to be

furnished to the City Manager information which reflects the financial ability (e.g., financial audit) and the management ability (e.g., experience and resume of proposed management) of its' proposed Assignee to operate a gas utility. The aforesaid thirty (30) days notice shall not commence to run until Grantee has furnished such information. The rights, powers, limitations, duties, and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

Section 8. Should any part or portion hereof be declared invalid, void or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate and distinct from the balance and such declaration shall not affect the validity of the remaining portions hereof.

Section 9. This ordinance shall be published as provided by law and the cost thereof shall be paid by the Grantee upon presentation of an invoice for publication and proof of publication by the Grantor.

Section 10. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. The New Mexico Public Service Commission has general and exclusive power and jurisdiction to regulate and supervise Grantee in respect to its rates and services regulations and in respect to its securities, all in accordance with provisions of the New Mexico Public Utility Act (§62-6-4, NMSA 1978). A copy of Grantee's rates and service regulations are on file for public reading at the Office of the City Clerk of the City of Hobbs, Lea County, New Mexico, during normal working hours.

If at any time the New Mexico Public Utility Act (§62-6-4, NMSA 1978) is amended or repealed with the effect of such action being deletion of standards of service as are now in effect, the Grantor reserves the right to establish standards of service not inconsistent with the terms of said statute or regulations promulgated pursuant thereto prior to said amendment or repeal.

Section 12. Grantee shall have ten (10) days to execute its "ACCEPTANCE" herein contained and file the same with the Office of the Clerk of the City of Hobbs, Lea County, New Mexico. In the absence thereof, the Grantee shall be deemed to have rejected the Franchise Ordinance in its entirety.

PASSED, ADOPTED AND APPROVED this 1st day of July, 2013.

/s/ SAM D. COBB
Sam Cobb, Mayor
CITY OF HOBBS

Approved as to Form:
/s/ MICHAEL H. STONE
Michael H. Stone, City Attorney

ATTEST:
By: /s/ JAN FLETCHER
Jan Fletcher, City Clerk

ACCEPTANCE

WHEREAS, the City Commission of the CITY OF HOBBS, LEA COUNTY, New Mexico, enacted on the ____ day of _____, _____ Ordinance Number _____ entitled:

AN ORDINANCE GRANTING TO ZIA NATURAL GAS COMPANY, A DIVISION OF NATURAL GAS PROCESSING CO., A WYOMING CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE IN THE CITY OF HOBBS, LEA COUNTY, STATE OF NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, TO USE THE STREETS, HIGHWAYS, RIGHTS OF WAY AND PUBLIC GROUNDS OF SAID TOWN FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A NATURAL GAS DISTRIBUTION SYSTEM, FOR A PERIOD OF FIFTEEN (15) YEARS, AND PRESCRIBING TERMS AND CONDITIONS HEREIN CONTAINED.

WHEREAS, said ordinance was duly approved by the Mayor and attested by the City Clerk;

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, Zia Natural Gas Company hereby accepts said Ordinance and files this as a written acceptance with the Clerk of the CITY OF HOBBS.

DATED this ____ day of _____, 2013.

ZIA NATURAL GAS COMPANY

_____

David L. Hamilton, President

Acceptance filed in the Office of the Clerk of the CITY OF HOBBS, LEA COUNTY, New Mexico, this ____ day of _____, 2013.

ATTEST:

By: _____

Jan Fletcher, City Clerk

STATUTORY REFERENCES FOR NEW MEXICO MUNICIPALITIES

The statutory references listed below refer the code user to state statutes applicable to New Mexico municipalities. They are up to date through the First Session of the 51st Legislature in 2013. (References simply referring to an article (art.) are referring to an article within Chapter 3 of the New Mexico Statutes.)

General Provisions

Municipal corporations
New Mexico Const. art. X

Incorporation
NMSA 1978 arts. 3-2 and 3-3

Home rule
NMSA Const. art. X § 6

Municipal charters
NMSA 1978 art. 3-15

Annexation
NMSA 1978 art. 3-7

Eminent domain
NMSA 1978 § 3-18-10

Combined municipal organizations
NMSA 1978 art. 3-16

Powers of municipalities
NMSA 1978 art. 3-18

Confinement of offenders
NMSA 1978 § 3-18-20

Adoption of codes
NMSA 1978 § 3-17-6

Ordinances
NMSA 1978 art. 3-17

Ordinance violation procedures
NMSA 1978 art. 35-15

Penalties for ordinance violations
NMSA 1978 § 3-17-1

Elections
NMSA 1978 art. 3-8

Absentee voting
NMSA 1978 art. 3-9

Administration and Personnel

Mayor-council form of government
NMSA 1978 art. 3-11

Commission-manager form of government
NMSA 1978 art. 3-14

Governing body
NMSA 1978 art. 3-12

Municipal officers generally
NMSA 1978 art. 3-10

Clerk, police officer, manager
NMSA 1978 art. 3-13

Construction inspector licensing
NMSA 1978 § 60-13-41 et seq.

Open meetings
NMSA 1978 art. 10-15

Ordinances
NMSA 1978 art. 3-17

Procurement Code
NMSA 1978 § 13-1-21 et seq.

Public records
NMSA 1978 ch. 14

Planning commission and master plans
NMSA 1978 art. 3-19

Municipal courts
NMSA 1978 art. 35-14

Libraries
NMSA 1978 § 3-18-14

Park commission
NMSA 1978 art. 3-47

Municipal employees retirement system
NMSA 1978 § 3-18-28

Fire department
NMSA 1978 §§ 3-18-11 and 3-18-11.1

Methods of insurance
NMSA 1978 art. 3-62

Revenue and Finance

Municipal finances
NMSA 1978 art. 3-37

Municipal indebtedness
N.M. Const. art. IX; NMSA art. 3-30

Revenue bonds
NMSA 1978 art. 3-31

Industrial Revenue Bond Act
NMSA 1978 art. 3-32

Improvement districts
NMSA 1978 art. 3-33

Street improvement fund
NMSA 1978 art. 3-34

Sale or lease of property
NMSA 1978 art. 3-54

Municipal liens
NMSA 1978 art. 3-36

Small cities assistance fund
NMSA 1978 art. 3-37A

Prohibition on municipal taxing power
NMSA 1978 § 3-18-2

Lodgers Tax Act
NMSA 1978 § 3-38-13 et seq.

Municipal gross receipts tax
NMSA 1978 art. 7-19

Municipal local option gross receipts tax
NMSA 1978 art. 7-19D

County and Municipal Gasoline Tax Act
NMSA 1978 art. 7-24A

Convention Center Financing Act
NMSA 1978 § 5-13-1 et seq.

Liquor license taxes
NMSA 1978 art. 7-24

Business Licenses and Regulations

License fees and taxes
NMSA 1978 art. 3-38

Municipal Cable Television Act
NMSA 1978 art. 3-23A

Gasoline sales
NMSA 1978 § 3-18-31

Secondhand dealers and junk stores
NMSA 1978 § 3-18-24

Liquor license taxes
NMSA 1978 art. 7-24

Markets and market places
NMSA 1978 § 3-18-16

Animals

Power to regulate animals
NMSA 1978 § 3-18-3

Health and Safety

Health; control of disease
NMSA 1978 art. 3-43

Hospitals
NMSA 1978 art. 3-44

Ambulance service
NMSA 1978 art. 5-1

Refuse collection and disposal
NMSA 1978 art. 3-48

Flood control
NMSA 1978 art. 3-41

Nuisances
NMSA 1978 §§ 3-18-13 and 3-18-17

Food and merchandise
NMSA 1978 § 3-18-12

Fire prevention
NMSA 1978 § 3-18-11

Fireworks
NMSA 1978 art. 60-2C

Public Peace, Morals and Welfare

Police ordinances
NMSA 1978 § 3-17-1

Criminal offenses
NMSA 1978 ch. 30

Disorderly conduct
NMSA 1978 § 3-18-17

Gambling
NMSA 1978 § 3-18-17

Public intoxication
NMSA 1978 § 3-18-17

Riots
NMSA 1978 § 3-18-17

Vehicles and Traffic

Motor Vehicle Code
NMSA 1978 ch. 66

Adoption of traffic code
NMSA 1978 § 3-17-6

Powers of local authorities
NMSA 1978 §§ 66-7-8, 66-7-9, 66-7-215

Drunk driving penalty
NMSA § 3-17-1(C)(2)

Parking
NMSA 1978 § 3-18-30 and art. 3-50

Toll bridges
NMSA § 3-18-26

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Streets, sidewalks and public grounds
NMSA 1978 art. 3-49

Parks and recreation
NMSA 1978 §§ 3-18-18, 3-18-19

Trees and shrubs
NMSA 1978 § 3-18-27

Improvement districts
NMSA 1978 art. 3-33

Public Services

Municipal airports
NMSA 1978 art. 3-39

Municipal cemeteries
NMSA 1978 art. 3-40

Public utility franchises
NMSA 1978 art. 3-42

Public utilities generally
NMSA 1978 art. 3-23

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NMSA 1978 art. 3-24

Cable television
NMSA 1978 art. 3-23A

Gas utilities
NMSA 1978 art. 3-25

Water facilities
NMSA 1978 § 3-18-25 and art. 3-27

Sewage facilities
NMSA 1978 § 3-18-25 and art. 3-26

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NMSA 1978 art. 3-28

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NMSA 1978 art. 3-31

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NMSA 1978 art. 3-33

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NMSA 1978 art. 3-52

Water use regulations
NMSA 1978 art. 3-53

Refuse collection and disposal
NMSA 1978 art. 3-48

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NMSA 1978 art. 3-41

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NMSA 1978 art. 3-35

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NMSA 1978 § 3-18-14

Buildings and Construction

Dangerous buildings
NMSA 1978 § 3-18-5

Building codes and fire zones
NMSA 1978 §§ 3-17-6, 3-18-6

Subdivisions

Subdivisions; planning and platting
NMSA 1978 art. 3-20

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Zoning regulations
NMSA 1978 art. 3-21

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NMSA 1978 art. 3-22

Manufactured housing and zoning
NMSA 1978 art. 3-21A

PRIOR CODE CROSS-REFERENCE TABLE

This table provides users with the legislative history and the current disposition of the sections in the Hobbs Municipal Code.

Thus, prior code Section 1-1 appears in this code in Chapter 1.04.

The legislative history information was derived from the Code of the City of Hobbs, New Mexico, comprising the general ordinances of the city.

As of the 2009 Republication, this table will no longer be updated.

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
1-1	1-1		1.04.010
1-2	1-2		1.04.020
1-3	1-3		1.04.030
1-4	1-4		1.04.040
1-5	1-5		1.04.050
1-6	1-6	Code 1958, § 1-101; Ord. No. 759, 9-16-85; Ord. No. 805, 1-6-92	1.08.010
2-1	2-1	Code 1958, § 1-301	3.04.010
2-2	2-2	Ord. No. 451, 5-5-58	3.04.020
2-3	2-3	Res. No. 1869, §§ 1 to 5	2.08.010
2-4	2-4	Ord. No. 760, 9-16-85; Code 195 8, §§ 1-401, 1-405;	2.04.010
2-5	2-5	Ord. No. 796, 9-4-90	2.04.020
2-6	2-6	Code 1958, §§ 1-406 to 1-408	2.04.030
2-6	2-7	Code 1958, § 1-414	Repealed by 978
2-8	2-8	Code 1958, § 1-402	Repealed by 978
2-9	2-9	Ord. No. 602, 4-3-72	2.04.060
2-10	2-10	Code 1958, § 1-409	2.04.070
2-11	2-11	Code 1958, § 1-410	Repealed by 978

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
2-12	2-12	Code 1958, § 1-411	Repealed by 978
2-13	2-13	Code 1958, § 1-412	Repealed by 978
2-14	2-14	Code 1958, § 1-413	Repealed by 978
2-15	2-15	Ord. No. 787, 9-18-89	2.04.120
2-16	2-16	Ord. No. 579, 6-15-70; Ord. No. 707, 2-18-80, § 1; Ord. No. 746, 3-21-83; Ord. No. 801, 3-18-91	Repealed by 916
2-17	2-17	Ord. No. 579, 6-15-70; Ord. No. 707, 2-18-80, § 2; Ord. No. 746, 3-21-83	Repealed by 916
2-18	2-18	Code 1958, § 1-225	Repealed by 916
2-19	2-19	Code 1958, § 1-226	Repealed by 916
2-20	2-20	Code 1958, § 1-227	Repealed by 916
2-21	2-21	Code 1958, § 1-228	Repealed by 916
2-22	2-22	Code 1958, § 1-229	2.08.020
2-23	2-23	Code 1958, § 1-222	2.08.030
2-24	2-24	Code 1958, § 1-230	2.56.070
2-25	2-25	Code 1958, § 1-223	2.08.040
2-26	2-26	Code 1958, § 1-224	2.08.050
2-27	2-27	Ord. No. 641, 5-21-74	2.08.060
2-28	2-28	Code 1958, § 1-221	2.08.070
2-34	2-34	Ord. No. 621, 5-21-73	2.44.010
2-35	2-35	Ord. No. 621, 5-21-73	2.44.020
2-36	2-36	Ord. No. 621, 5-21-73	2.44.030
2-37	2-37	Ord. No. 621, 5-21-73	2.44.040
2-38	2-38	Ord. No. 621, 5-21-73	2.44.050
2-39	2-39	Ord. No. 621, 5-21-73	2.44.060

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
2-40	2-40	Ord. No. 621, 5-21-73	2.44.070
2-41	2-41	Ord. No. 621, 5-21-73	2.44.080
2-42	2-42	Ord. No. 621, 5-21-73	2.44.090
2-43	2-43	Ord. No. 621, 5-21-73	2.44.100
2-46	2-46	Ord. No. 620, 5-21-73	2.28.010
2-47	2-47	Ord. No. 447, 5-5-58	2.28.020
2-48	2-48	Ord. No. 447, 5-5-58	2.28.030
2-49	2-49	Ord. No. 620, 5-21-73	2.28.040
2-50	2-50	Ord. No. 557, 5-6-68	2.28.050
2-51	2-51	Ord. No. 557, 5-6-68	2.28.060
2-53	2-53	Ord. No. 446, 5-5-58; Ord. No. 619, 5-21-73	2.20.010
2-54	2-54	Ord. No. 446, 5-5-58; Ord. No. 619, 5-21-73	2.20.020
2-55	2-55		2.20.030
2-56	2-56	Ord. No. 446, 5-5-58	2.20.040
2-57	2-57	Ord. No. 619, 5-21-73	2.20.050
2-58	2-58	Ord. No. 446, 5-5-58	2.20.060
2-60	2-60	Ord. No. 614, 4-2-73	2.36.010
2-61	2-61	Ord. No. 445, 5-5-58; Ord. No. 614, 4-2-73	2.36.020
2-62	2-62	Ord. No. 445, 5-5-58	2.36.030
2-63	2-63	Ord. No. 445, 5-5-58	2.36.040
2-64	2-64	Ord. No. 445, 5-5-58; Ord. No. 614, 4-2-73	2.36.050
2-65	2-65	Ord. No. 445, 5-5-58	2.36.060
2-68	2-68	Ord. No. 641, 5-21-74	2.40.010
2-69	2-69	Ord. No. 641, 5-21-74	2.40.020
2-70	2-70	Ord. No. 641, 5-21-74	2.40.030
2-71	2-71	Ord. No. 641, 5-21-74	2.40.040
2-72	2-72	Ord. No. 641, 5-21-74	2.40.050
2-72.1	2-72.1	Ord. No. 641, 5-21-74	2.40.060
2-73	2-73	Ord. No. 616, 4-2-73	2.32.010
2-74	2-74	Ord. No. 616, 4-2-73	2.32.020
2-75	2-75	Ord. No. 616, 4-2-73	2.32.030

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
2-76	2-76	Ord. No. 616, 4-2-73	2.32.040
2-77	2-77	Ord. No. 616, 4-2-73	2.32.050
2-78	2-78	Ord. No. 616, 4-2-73	2.32.060
2-79	2-79	Ord. No. 616, 4-2-73	2.32.070
2-80	2-80	Ord. No. 616, 4-2-73	2.32.080
2-81	2-81	Ord. No. 616, 4-2-73	2.32.090
2-82	2-82	Ord. No. 616, 4-2-73	2.32.100
2-83	2-83	Ord. No. 711, 4-21-80	2.24.010
2-84	2-84	Ord. No. 711, 4-21-80	2.24.020
2-85	2-85	Ord. No. 711, 4-21-80	2.24.030
2-86	2-86	Ord. No. 711, 4-21-80	2.24.040
2-87	2-87	Ord. No. 711, 4-21-80	2.24.050
2-88	2-88	Ord. No. 711, 4-21-80	2.24.060
2-91	2-91	Ord.810; Ord. 830	Repealed by 857
2-92	2-92	Ord.810; Ord. 830	Repealed by 857
2-93	2-93	Ord.810; Ord. 830	Repealed by 857
2-94	2-94	Ord.810; Ord. 830	Repealed by 857
2-95	2-95	Ord.810; Ord. 830	Repealed by 857
2-96	2-96	Ord.810; Ord. 830	Repealed by 857
2-97	2-97	Ord.810; Ord. 830	Repealed by 857
2-98	2-98	Ord.810; Ord. 830	Repealed by 857
2-99	2-99	Ord.810; Ord. 830	Repealed by 857
2-100	2-100	Ord.810; Ord. 830	Repealed by 857
2-101	2-101	Ord.810; Ord. 830	Repealed by 857

PRIOR CODE CROSS-REFERENCE TABLE

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
2-102	2-102	Ord.810; Ord. 830	Repealed by 857
2-103	2-103	Ord.810; Ord. 830	Repealed by 857
2-104	2-104	Ord.810; Ord. 830	Repealed by 857
2-105	2-105	Ord.810; Ord. 830	Repealed by 857
2-106	2-106	Ord.810; Ord. 830	Repealed by 857
2-107	2-107	Ord.810; Ord. 830	Repealed by 857
2-108	2-108	Ord.810; Ord. 830	Repealed by 857
2-109	2-109	Ord.810; Ord. 830	Repealed by 857
2-110	2-110	Ord.810; Ord. 830	Repealed by 857
2-111	2-111	Ord.810; Ord. 830	Repealed by 857
2-112	2-112	Ord.810; Ord. 830	Repealed by 857
3-1	3-1	Ord. No. 582, 10-23-70	12.36.010
3-2	3-2	Ord. No. 582, 10-23-70	12.36.020
3-3	3-3	Ord. No. 582, 10-23-70	12.36.030
3-4	3-4	Ord. No. 582, 10-23-70	12.36.040
3-5	3-5	Ord. No. 582, 10-23-70	12.36.050
3-6	3-6	Ord. No. 582, 10-23-70	12.36.060
3-7	3-7	Ord. No. 582, 10-23-70	12.36.070
3-8	3-8	Ord. No. 582, 10-23-70	12.36.080
3-9	3-9	Ord. No. 582, 10-23-70	12.36.090
3-10	3-10	Ord. No. 582, 10-23-70	12.36.100
3-11	3-11	Ord. No. 582, 10-23-70	12.36.110
3-12	3-12	Ord. No. 582, 10-23-70	12.36.120

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
4-1	4-1	Code 1958, § 3-301; Ord. No. 539, 2-6-67	5.44.010
4-2	4-2	Code 1958, § 3-301; Ord. No. 539, 2-6-67	5.44.020
4-3	4-3	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.030
4-4	4-4	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.040
4-5	4-5	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.050
4-6	4-6	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.060
4-7	4-7	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.070
4-7.1	4-7.1		5.44.080
4-8	4-8	Code 1958, § 3-312; Ord. No. 539, 2-6-67; Ord. No. 549, 7-6-67	5.44.090
4-9	4-9	Code 1958, § 3-303; Ord. No. 539, 2-6-67	5.44.100
4-10	4-10	Code 1958, §§ 3-304, 3-310; Ord. No. 520, 1-18-65; Ord. No. 539, 2-6-67	5.44.110
4-11	4-11	Code 1958, § 3-306; Ord. No. 539, 2-6-67	5.44.120
4-12	4-12	Code 1958, § 3-305; Ord. No. 539, 2-6-67; Ord. No. 549, 7-6-67	5.44.130

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
4-13	4-13	Code 1958, § 3-307; Ord. No. 539, 2-6-67	5.44.140
4-14	4-14	Code 1958, § 3-309; Ord. No. 539, 2-6-67	5.44.150
4-15	4-15	Ord. No. 560, 5-23-68	5.44.160
4-16	4-16	Code 1958, § 3-311; Ord. No. 539, 2-6-67	5.44.170
4-17	4-17	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539, 2-6-67	5.44.180
4-18	4-18	Code 1958, § 3-310; Ord. No. 520, 1-18-65; Ord. No. 539 2-6-67	5.44.190
5-1	5-1	Ord. No. 564, 1-23-69	8.08.010
5-2	5-2	Ord. No. 564, 1-23-69	8.08.020
5-3	5-3	Ord. No. 564, 1-23-69	8.08.030
5-4	5-4	Ord. No. 564, 1-23-69	8.08.040
5-5	5-5	Ord. No. 564, 1-23-69; Ord. No. 567, 6-16-69; Ord. No. 669, 9-6-77; Ord. No. 756, 6-17-85; Ord. No. 800, 3-18-91	8.08.050
6-1	6-1		6.04.010
6-2	6-2		6.04.020
6-3	6-3		6.04.030
6-4	6-4		6.04.040
6-5	6-5		6.04.050
6-6	6-6		6.04.060
6-7	6-7		6.04.070
6-8	6-8		6.04.080
7-1	7-1	Code 1958, § 4-101; Ord. No. 598, 2-7-72; Ord. No. 705; Ord. No. 744, 2-21-83; Ord. No. 765, 6-16-86; Ord. No. 788, 11-6-89	15.04.010

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
7-2	7-2	Code 1958, § 4-101; Ord. No. 598, 2-7-72; Ord. No. 744, 2-21-83	15.04.020
7-3	7-3	Code 1958, 4-103	15.04.030
7-4	7-4	Code 1958, § 4-104; Ord. 546, 5-29-67; 6-1-73; Ord. No. 673, 12-5-77; Ord. No. 683, 7-24-78; Ord. No. 684, 8-21-78; Ord. No. 686, 9-18-78; Ord. No. 691, 12-4-78; Ord. No. 701; Ord. No. 705; Ord. No. 744, 2-21-83	15.08.010—15.08.050
7-5	7-5	Code 1958, § 4-302	15.04.040
7-6	7-6		15.04.050
7-7	7-7		15.24.010
7-8	7-8		15.24.020
7-9	7-9		15.24.030
7-10	7-10		15.24.040
7-11	7-11		15.24.050
7-12	7-12		15.24.060
7-13	7-13		15.24.070
7-14	7-14		15.16.010—15.16.080
7-15	7-15		15.24
7-16	7-16		15.20.010
7-17	7-17		15.20.020
7-18	7-18		15.20.030
7-19	7-19	Code 1958, § 4-708	15.32.010
7-20	7-20	Code 1958, § 4-709	15.32.020
7-22	7-22	Code 1958, § 4-712	15.32.030
7-23	7-23	Code 1958, § 4-713	15.32.040
7-24	7-24		15.32.050
7-25	7-25		15.32.060
7-26	7-26		15.32.070
7-27	7-27		15.32.080
7-28	7-28		15.32.090

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
7-29	7-29		15.32.100
7-30	7-30		15.32.110
7-31	7-31		15.32.120
7-32	7-32		15.32.130
7-35	7-35		15.32.140
7-37	7-37		15.32.150
7-43	7-43		15.32.160
7-44	7-44		15.32.170
7-45	7-45		15.28.010
7-46	7-46		15.28.020
7-47	7-47		15.28.030
7-48	7-48		15.28.040
7-49	7-49		15.28.050
7-50	7-50		15.28.060
7-51	7-51		15.28.070
8-1	7A-1	Ord. No. 719, 10-6-80	5.28.010
8-2	7A-2	Ord. No. 719, 10-6-80	5.28.020
8-3	7A-3	Ord. No. 719, 10-6-80	5.28.030
8-4	7A-4	Ord. No. 719, 10-6-80	5.28.040
8-5	7A-5	Ord. No. 719, 10-6-80	5.28.050
8-6	7A-6	Ord. No. 719, 10-6-80	5.28.060
8-7	7A-7	Ord. No. 719, 10-6-80	5.28.070
8-8	7A-8	Ord. No. 719, 10-6-80	5.28.080
8-9	7A-9	Ord. No. 719, 10-6-80	5.28.090
8-10	7A-10	Ord. No. 719, 10-6-80	5.28.100
8-11	7A-11	Ord. No. 719, 10-6-80	5.28.110
8-12	7A-12	Ord. No. 719, 10-6-80	5.28.120
8-13	7A-13	Ord. No. 719, 10-6-80	5.28.130
8-14	7A-14	Ord. No. 719, 10-6-80	5.28.140
9-1	8-1	Code 1958, § 6-201; Ord. No. 780, 1-9-89	12.32.010
9-2	8-2	Ord. No. 780, 1-9-89	12.32.020
9-3	8-3	Code 1958, § 6-202; Ord. No. 780, 1-9-89	12.32.030
9-4	8-4	Ord. No. 780, 1-9-89	12.32.040

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
9-5	8-5	Ord. No. 446, 5-5-58; Ord. No. 780, 1-9-89	12.32.050
9-6	8-6	Ord. No. 624, 6-5-73; Ord. No. 702; Ord. No. 726, 7-20-81; Ord. No. 780, 1-9-89; Res. No. 2912, 11-5-90	12.32.060
9-7	8-7	Ord. No. 604, 6-5-72; Ord. No. 780, 1-9-89	12.32.070
9-8	8-8	Ord. No. 604, 6-5-72; Res. No. 1660, 6-5-72; Ord. No. 780, 1-9-89	12.32.080
9-9	8-9	Ord. No. 780, 1-9-89	12.32.090
10-1	8A-1	Ord. No. 720, 11-3-80	2.52.010
10-2	8A-2	Ord. No. 720, 11-3-80	2.52.020
10-3	8A-3	Ord. No. 720, 11-3-80	2.52.030
10-4	8A-4	Ord. No. 720, 11-3-80	2.52.040
11-1	9-1		Ch. 1.16
11-1.1	9-1.1		Ch. 1.16
11-1.2	9-1.2		Ch. 1.16
11-1.3	9-1.3		Not Codified
11-1.4	9-1.4		Not Codified
11-2	9-2	Ord. No. 563, 1-20-69; Ord. No. 569, 7-21-69; Ord. No. 690, 12-4-78	1.12.010
11-3	9-3	Code 1958, § 5-112	1.12.020
1-4	9-4	Code 1958, § 5-112; Ord. No. 690, 12-4-78	1.12.030
11-5	9-5	Code 1958, § 5-113; Ord. No. 690, 12-4-78	2.16.070
11-6	9-6	Code 1958, § 5-104; Ord. 690, 12-4-78	2.16.080
11-7	9-7	Code 1958, § 5-105	2.16.090
11-8	9-8	Code 1958, § 5-106	2.16.100
11-9	9-9	Code 1958, § 5-107	2.16.110

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
11-10	9-10	Code 1958, § 5-108	2.16.120
11-11	9-11	Code 1958, § 5-109	2.16.130
11-12	9-12	Code 1958, § 5-110	2.16.140
11-13	9-13	Code 1958, § 5-111	2.16.150
11-14	9-14	Code 1958, § 5-115	2.16.160
11-15	9-15	Code 1958, § 5-116	2.16.010
11-16	9-16	Ord. No. 586, 12-7-70	2.16.020
11-18	9-18	Code 1958, § 5-124	2.16.030
11-19	9-19	Code 1958, § 5-121	2.16.040
11-20	9-20	Ord. No. 594, 6-7-71; Ord. No. 795, 8-6-90	2.16.050
11-21	9-21	Code 1958, § 5-123	2.16.170
11-22	9-22	Code 1958, § 5-123	2.16.060
11-23	9-23		2.12.010
11-24	9-24		2.12.020
11-25	9-25		2.12.030
11-26	9-26		2.12.040
11-27	9-27		2.12.050
11-28	9-28		2.12.060
12-1	9A-1	Ord. No. 793, § 1, 4-16-90	9.40.010
12-2	9A-2	Ord. No. 793, § 2, 4-16-90	9.40.020
12-3	9A-3	Ord. No. 793, § 3, 4-16-90	9.40.030
12-4	9A-4	Ord. No. 793, § 4, 4-16-90	9.40.040
12-5	9A-5	Ord. No. 793, § 5, 4-16-90	9.40.050
12-6	9A-6	Ord. No. 793, § 6, 4-16-90	9.40.060
12-7	9A-7	Ord. No. 793, § 7, 4-16-90	9.40.070
12-8	9A-8	Ord. No. 793, § 8, 4-16-90	9.40.080
12-9	9A-9	Ord. No. 793, § 9, 4-16-90	9.40.090
12-10	9A-10	Ord. No. 793, § 11, 4-16-90	9.40.100
12-11	9A-11	Ord. No. 793, § 10, 4-16-90	9.40.110
13-1	10-1	Ord. No. 524, 2-15-65; Ord. No. 729, § 3, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
13-2	10-2	Ord. No. 524, 2-15-65; Ord. No. 597, § 1; Ord. No. 729, § 1, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-3	10-3	Ord. No. 524, 2-15-65; Ord. No. 729, § 7, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-4	10-4	Ord. No. 524, 2-15-65; Ord. No. 729, § 2, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-5	10-5	Ord. No. 729, § 4, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-6	10-6	Ord. No. 729, § 5, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-7	10-7	Ord. No. 524, 2-15-65; Ord. No. 729, § 6, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-8	10-8	Ord. No. 524, 2-15-65; Ord. No. 729, § 8, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-9	10-9	Ord. No. 524, 2-15-65; Ord. No. 729, § 9, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
13-10	10-10	Ord. No. 524, 2-15-65; Ord. No. 729, § 10, 1-4-82; Ord. No. 789, 11-20-89	Repealed by 923
14-1	10A-1	Ord. No. 802, § 1, 6-3-91	8.12.010
14-2	10A-2	Ord. No. 802, § 2, 6-3-91	8.12.020
14-3	10A-3	Ord. No. 802, § 3, 6-3-91	8.12.030
14-4	10A-4	Ord. No. 802, § 4, 6-3-91	8.12.040
14-5	10A-5	Ord. No. 802, § 5, 6-3-91	8.12.050
14-6	10A-6	Ord. No. 802, § 6, 6-3-91	8.12.060
14-7	10A-7	Ord. No. 802, § 7, 6-3-91	8.12.070
14-8	10A-8	Ord. No. 802, § 8, 6-3-91	8.12.080

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
14-9	10A-9	Ord. No. 802, § 9, 6-3-91	8.12.090
15-1	11-1	Ord. No. 643, 8-5-74	Ch. 8.16
15-2	11-2	Ord. No. 643, 8-5-74	Ch. 8.16
15-3	11-3	Ord. No. 643, 8-5-74	8.36.030
15-4	11-4	Ord. No. 523, 2-1-65	8.36.040
15-5	11-5	Code 1958, § 7-1012	8.36.050
15-6	11-6	Ord. No. 643, 8-5-74	8.36.060
15-7	11-7	Ord. No. 643, 8-5-74	8.36.070
15-8	11-8	Ord. No. 643, 8-5-74	8.36.080
15-9	11-9	Code 1958, § 7-1014	8.36.090
15-10	11-10	Code 1958, § 7-1004	8.36.100
15-11	11-11	Code 1958, § 7-1005	8.36.110
15-12	11-12	Code 1958, §§ 7-1010, 7-1011	8.36.120
15-13	11-13	Code 1958, § 7-1006	8.36.130
15-14	11-14	Ord. No. 643, 8-5-74	Ch. 8.16
15-15	11-15	Ord. No. 643, 8-5-74	Ch. 8.16
15-16	11-16	Ord. No. 643, 8-5-74	Ch. 8.16
15-17	11-17	Ord. No. 643, 8-5-74; Ord. No. 671, 11-7-77	Ch. 8.16
15-18	11-18	Ord. No. 643, 8-5-74	Ch. 8.16
15-19	11-19	Ord. No. 643, 8-5-74	Ch. 8.16
15-19.1	11-19.1		Ch. 8.16
15-20	11-20	Ord. No. 643, 8-5-74	Ch. 8.16
15-21	11-21	Ord. No. 643, 8-5-74	Ch. 8.16
15-22	11-22	Ord. No. 643, 8-5-74	Ch. 8.16
15-23	11-23	Ord. No. 643, 8-5-74	Ch. 8.16
15-24	11-24	Ord. No. 643, 8-5-74	Ch. 8.16
15-25	11-25	Ord. No. 643, 8-5-74; Ord. No. 651, 3-3-75; Ord. No. 721, 12-1-80; Ord. No. 757, 6-17-85; Ord. No. 790, 12-4-89; Ord. No. 807, 6-1-92	Ch. 8.16
15-26	11-26	Ord. No. 643, 8-5-74	Ch. 8.16
15-27	11-27	Ord. No. 643, 8-5-74	Ch. 8.16
15-28	11-28	Ord. No. 643, 8-5-74	Ch. 8.16

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
15-29	11-29	Ord. No. 643, 8-5-74	Ch. 8.16
15-30	11-30	Ord. No. 643, 8-5-74	Ch. 8.16
15-31	11-31	Ord. No. 643, 8-5-74	Ch. 8.16
15-32	11-32	Ord. No. 694, § 4	Ch. 8.16
16-6	12-6	Ord. No. 783, 6-5-89	8.40.010
16-7	12-7	Ord. No. 783, 6-5-89	8.40.020
16-8	12-8	Ord. No. 783, 63-89	8.40.030
16-9	12-9	Ord. No. 783, 6-5-89	8.40.040
16-10	12-10	Ord. No. 783, 6-5-89	8.40.050
16-11	12-11	Ord. No. 783, 6-5-89	8.40.060
16-12	12-12	Ord. No. 783, 6-5-89	8.40.070
16-13	12-13	Ord. No. 783, 6-5-89	8.40.080
16-14	12-14	Ord. No. 783, 6-5-89	8.40.090
16-15	12-15	Ord. No. 783, 6-5-89	8.40.100
16-16	12-16	Ord. No. 783, 6-5-89	8.40.110
16-17	12-17		8.28.010
16-18	12-18		8.28.020
16-19	12-19		8.28.030
16-20	12-20		8.28.040—8.28.060
17-1	13-1	Code 1958, §§ 7-402, 7-406	5.24.010
17-2	13-2	Code 1958, § 7-401	5.24.020
17-3	13-3	Code 1958, § 7-403	5.24.030
17-4	13-4	Code 1958, § 7-405	5.24.040
17-5	13-5	Code 1958, § 7-407	5.24.050
17-6	13-6	Code 1958, § 7-408	5.24.060
17-7	13-7	Code 1958, § 7-409	5.24.070
17-8	13-8	Code 1958, § 7-411	5.24.080
17-9	13-9	Code 1958, § 7-412	5.24.090
17-10	13-10		5.24.100
18-11	14-11	Ord. No. 727, § 1, 8-17-81	Ch. 5.04
18-12	14-12	Ord. No. 727, § 2, 8-17-81	Ch. 5.04
18-13	14-13	Ord. No. 727, § 3, 8-17-81	Ch. 5.04
18-14	14-14	Ord. No. 727, § 4, 8-17-81	Ch. 5.04
18-15	14-15	Ord. No. 727, § 5, 8-17-81	Ch. 5.04

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
18-16	14-16	Ord. No. 727, § 6, 8-17-81	Ch. 5.04
18-17	14-17	Ord. No. 727, § 7, 8-17-81	Ch. 5.04
18-18	14-18	Ord. No. 727, § 8, 8-17-81	Ch. 5.04
18-19	14-19	Ord. No. 727, § 9, 8-17-81	Ch. 5.04
18-20	14-20	Ord. No. 727, § 10, 8-17-81	Not Codified
18-21	14-21	Ord. No. 727, § 11, 8-17-81	Ch. 5.04
18-21.1	14-21.1	Ord. No. 727, § 12, 8-17-81	Ch. 5.04
18-21.2	14-21.2	Ord. No. 725, § 1, 7-6-81; Ord. No. 770, § 1, 7-20-87; Ord. No. 809, § 1, 9-24-92	5.08.010
18-21.3	14-21.3	Ord. No. 770, § 2, 7-20-87; Ord. No. 809, § 2, 9-24-92	5.08.020
18-21.4	14-21.4	Ord. No. 725, § 2, 7-6-81; Ord. No. 770, § 3, 7-20-87; Ord. No. 809, § 3, 9-24-92	5.08.030
18-21.5	14-21.5	Ord. No. 725, § 3, 7-6-81; Ord. No. 770, § 4, 7-20-87; Ord. No. 809, § 4, 9-24-92	5.08.040
18-21.6	14-21.6	Ord. No. 770, § 5, 7-20-87; Ord. No. 809, § 5, 9-24-92	Not codified
18-22	14-22	Ord. No. 722, 1-5-81	Repealed by 931
18-23	14-23	Ord. No. 722, 1-5-81	Repealed by 931
18-24	14-24	Ord. No. 722, 1-5-81	Repealed by 931
18-25	14-25	Ord. No. 722, 1-5-81	Repealed by 931
18-26	14-26	Ord. No. 722, 1-5-81	Repealed by 931
18-27	14-27	Ord. No. 722, 1-5-81	Repealed by 931
18-28	14-28	Ord. No. 722, 1-5-81	Repealed by 931

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
18-29	14-29	Ord. No. 722, 1-5-81	Repealed by 931
18-30	14-30	Ord. No. 722, 1-5-81	Repealed by 931
18-31	14-31	Ord. No. 722, 1-5-81; Ord. No. 735, 5-3-82	Repealed by 931
18-32	14-32	Ord. No. 722, 1-5-81	Repealed by 931
18-33	14-33	Ord. No. 722, 1-5-81	Repealed by 931
18-34	14-34	Ord. No. 732, 4-5-82	5.16.010
18-35	14-35	Ord. No. 732, 4-5-82	5.16.020
18-36	14-36	Ord. No. 732, 4-5-82	5.16.030
18-37	14-37	Ord. No. 732, 4-5-82	5.16.040
18-38	14-38	Ord. No. 732, 4-5-82	5.16.050
18-39	14-39	Ord. No. 732, 4-5-82	5.16.060
18-40	14-40	Ord. No. 732, 4-5-82	5.16.070
18-41	14-41	Ord. No. 732, 4-5-82	5.16.080
18-42	14-42	Ord. No. 732, 4-5-82	5.16.090
18-43	14-43	Ord. No. 732, 4-5-82	5.16.100
18-44	14-44	Ord. No. 732, 4-5-82	5.16.110
18-45	14-45		3.08.010
18-46	14-46		3.08.020
18-47	14-47		3.08.030
18-48	14-48		3.08.040
18-49	14-49		3.08.050
18-50	14-50		3.08.060
18-51	14-51		3.08.070
18-52	14-52		3.08.080
18-53	14-53		3.08.090
18-54	14-54		3.08.100
18-55	14-55		3.08.110
18-56	14-56		3.08.120
18-57	14-57		3.08.130
18-58	14-58		3.08.140

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
18-59	14-59		3.08.150
18-60	14-60		Not codified
18-61	14-61		Not codified
18-62	14-62		Not codified
19-1	15-1		9.20.010
19-2	15-2		9.20.020
19-3	15-3		9.20.040
19-4	15-4		9.20.050
19-5	15-5		9.20.060
19-6	15-6		9.20.070
19-7	15-7		9.20.080
19-8	15-8		9.20.100
19-9	15-9		9.20.110
15-10			9.20.120
15-11			9.20.130
15-12			Not codified
15-13			Not codified
19-14	15-14		Not codified
20-1	16-1	Ord. No. 747, 7-18-83; Ord. No. 769, 7-6-87; Ord. No. 777, 7-5-88	1.16.040
20-2	16-2	Ord. No. 748, 7-18-83	Repealed by 891
20-11	16-11	Code 1958, § 10-1-101; Ord. No. 692; Ord. No. 751, 12-5-83; Ord. No. 764, 1-6-86; Ord. No. 768, 7-6-87; Ord. No. 778, 7-5-88; Ord. No. 784, 7-24-89; Ord. No. 795, 8-6-90	10.04.010
20-12	16-12	Code 1958, § 10-102	10.04.020
20-13	16-13	Ord. No. 609, 1-9-73	10.04.030
20-14	16-14	Ord. No. 640, 6-17-74	10.04.040
20-14.1	16-14.1	Ord. No. 728, § 4, 9-21-81	1.12.100
20-14.2	16-14.2	Ord. No. 754, 7-2-84, §§ 1, 2	Ch. 1.16
20-15	16-15	Ord. No. 654, § 1	10.08.010

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
20-16	16-16	Ord. No. 654, § 2	10.08.020
20-17	16-17	Ord. No. 654, § 8	10.08.030
20-17.1	16-17.1		10.08.040
20-17.2	16-17.2		10.08.180
20-18	16-18	Ord. No. 654, § 11	10.08.050
20-19	16-19	Ord. No. 654, § 12	10.08.060
20-19.1	16-19.1	Ord. No. 715, 8-4-80	10.08.070
20-20	16-20	Ord. No. 654, § 3	10.08.080
20-21	16-21	Ord. No. 654, § 13	10.08.090
20-22	16-22	Ord. No. 654, § 4	10.08.100
20-22.1	16-22.1	Ord. No. 710, 4-21-80	10.08.110
20-23	16-23	Ord. No. 654, § 5	10.08.120
20-23.1	16-23.1	Ord. No. 723, 2-2-81	10.08.130
20-24	16-24	Ord. No. 654, § 6	10.08.140
20-25	16-25	Ord. No. 654, § 7	10.08.150
20-26	16-26	Ord. No. 654, § 9	Not Codified
20-27	16-27	Ord. No. 654, § 10	10.08.160
20-28	16-28	Ord. No. 687, 10-2-78	10.08.170
20-28.1	16-28.1	Ord. No. 654, § 14; Ord. No. 687, 10-2-78	10.08.180
20-29	16-29		10.12.010
20-30	16-30		10.12.020
20-31	16-31		10.12.030
20-32	16-32		10.12.040
	17-1		Repealed by 828
	17-2		Repealed by 828
21-1	18-1	Code 1958, § 7-2101	8.24.010
21-2	18-2	Code 1958, § 7-2102	8.24.020
21-3	18-3	Code 1958, § 7-2103	8.24.030
21-4	18-4	Code 1958, § 7-2104	8.24.040
21-5	18-5	Code 1958, § 7-2105	8.24.050
21-6	18-6	Code 1958, § 7-2106	8.24.060
21-7	18-7	Code 1958, § 7-2107	8.24.070

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
21-8	18-8	Code 1958, § 7-2108	8.24.080
22-1	19-1	Ord. No. 644, 9-16-74	9.16.010
22-2	19-2	Ord. No. 644, 9-16-74	9.20.030
22-2.1	19-2.1	Ord. No. 706	9.12.010
22-3	19-3	Code 1958, § 7-801	9.16.020
22-4	19-4	Ord. No. 644, 9-16-74	9.08.010
22-4.1	19-4.1		9.08.020
22-4.2	19-4.2		9.08.030
22-4.3	19-4.3		9.08.040
22-4.4	19-4.4		9.08.050
22-5	19-5	Ord. No. 644, 9-16-74	9.08.060
22-6	19-6	Ord. No. 644, 9-16-74	9.08.070
22-6.1	19-6.1	Ord. No. 706	9.16.030
22-7	19-7	Ord. No. 644, 9-16-74	9.08.080
22-7.1	19-7.1		9.08.090
22-8	19-8	Code 1958, § 7-701	9.36.010
22-9	19-9	Code 1958, § 7-702	9.36.020
22-10	19-10	Code 1958, § 7-703	9.36.030
22-10.1	19-10.1	Ord. No. 706	9.04.010
22-11	19-11	Ord. No. 644, 9-16-74	9.24.010
22-12	19-12	Ord. No. 644, 9-16-74	9.04.020
22-13	19-13	Ord. No. 644, 9-16-74	9.04.030
22-13.1	19-13.1	Ord. No. 706	9.16.040
22-14	19-14	Ord. No. 644, 9-16-74	Repealed by 869
22-15	19-15	Ord. No. 644, 9-16-74	Repealed by 869
22-16	19-16	Ord. No. 644, 9-16-74	Repealed by 869
22-17	19-17	Ord. No. 644, 9-16-74	Repealed by 869
22-18	19-18	Ord. No. 644, 9-16-74	Repealed by 869
22-19	19-19	Ord. No. 644, 9-16-74	Repealed by 869

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
22-20	19-20	Ord. No. 644, 9-16-74	Repealed by 869
22-21	19-21	Ord. No. 644, 9-16-74	Repealed by 869
22-22	19-22	Ord. No. 644, 9-16-74; Ord. No. 706	9.16.050
22-23	19-23	Ord. No. 644, 9-16-74	9.16.060
22-24	19-24	Ord. No. 644, 9-16-74	9.36.040
22-25	19-25	Ord. No. 644, 9-16-74	9.36.050
22-26	19-26	Ord. No. 644, 9-16-74	9.36.060
22-26.1	19-26.1	Ord. No. 706	9.36.070
22-27	19-27	Ord. No. 644, 9-16-74; Ord. No. 706	9.36.080
22-28	19-28	Ord. No. 644, 9-16-74	9.36.090
22-29	19-29	Ord. No. 644, 9-16-74	9.16.070
22-30	19-30	Ord. No. 637, 4-15-74	1.12.040
22-31	19-31	Ord. No. 637, 4-15-74	1.12.050
22-32	19-32	Ord. No. 637, 4-18-74	1.12.060
22-33	19-33	Ord. No. 637, 4-18-74	1.12.070
22-34	19-34	Ord. No. 637, 4-18-74	1.12.080
22-35	19-35	Ord. No. 637, 4-18-74	1.12.090
22-36	19-36	Ord. No. 644, 9-16-74	9.12.020
22-37	19-37	Ord. No. 644, 9-16-74	9.24.020
22-38	19-38	Ord. No. 644, 9-16-74	9.24.030
22-39	19-39	Ord. No. 644, 9-16-74; Ord. No. 706	9.04.040
22-40	19-40	Ord. No. 644, 9-16-74	Repealed by 869
22-41	19-41	Ord. No. 644, 9-16-74	9.24.040
22-42	19-42	Ord. No. 644, 9-16-74	9.24.050
22-42.1	19-42.1		9.04.050
22-43	19-43		9.04.060
22-43.1	19-43.1		8.04.010
22-43.2	19-43.2		8.04.020
22-43.3	19-43.3		8.04.030

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
22-43.4	19-43.4		8.04.040
22-43.5	19-43.5		8.04.050
22-43.6	19-43.6		8.04.060
22-43.7	19-43.7		8.04.070
22-43.8	19-43.8		8.04.080
22-43.9	19-43.9		8.04.090
22-43.10	19-43.10		8.04.100
22-43.11	19-43.11		8.04.110
22-43.12	19-43.12		8.04.120
22-43.13	19-43.13		8.04.130
22-43.14	19-43.14		8.04.140
22-44	19-44		Repealed by 802
22-45	19-45	Ord. No. 644, 9-16-74	9.24.060
22-46	19-46	Ord. No. 644, 9-16-74	Repealed by 939
22-47	19-47	Code 1958, § 7-1402	9.16.080
22-48	19-48	Ord. No. 644, 9-16-74	9.04.070
22-49	19-49	Ord. No. 644, 9-16-74	9.24.070
22-50	19-50	Ord. No. 648, § 1, 2-17-75	9.16.090
22-51	19-51	Ord. No. 648, § 2, 2-17-75	9.16.100
22-52	19-52	Ord. No. 648, § 3, 2-17-75	9.16.110
22-52.1	19-52.1	Ord. No. 706	9.20.090
22-53	19-53	Code 1958, § 7-1201	9.16.120
22-53.1	19-53.1	Ord. No. 706	8.20.010—8.20.070
22-54	19-54	Ord. No. 631, 12-3-73	9.32.010
22-55	19-55	Ord. No. 631, 12-3-73	9.32.020
22-56	19-56	Ord. No. 631, 12-3-73	Repealed by 869
22-56.1	19-56.1	Ord. No. 706	9.16.130
22-57	19-57	Ord. No. 644, 9-16-74	9.04.080
22-58	19-58	Ord. No. 644, 9-16-74	9.04.090
22-58.1	19-58.1	Ord. No. 636, 2-18-74; Ord. No. 714, 7-7-80	9.28.010

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
22-58.2	19-58.2	Ord. 706	9.12.040
22-58.3	19-58.3		9.28.020
22-59	19-59	Ord. No. 644, 9-16-74	9.16.140
22-60	19-60	Ord. No. 644, 9-16-74	Repealed by 869
22-60.1	19-60.1	Ord. No. 706	9.16.150
22-61	19-61	Ord. No. 644, 9-16-74	9.12.050
22-62	19-62	Ord. No. 644, 9-16-74	9.12.060
22-63	19-63	Ord. No. 644, 9-16-74	9.12.070
22-63.1	19-63.1		9.12.080
22-64	19-64	Ord. No. 644, 9-16-74	9.24.080
22-65	19-65	Ord. No. 644, 9-16-74	8.36.010
22-66	19-66	Ord. No. 644, 9-16-74	8.36.020
22-67	19-67	Ord. No. 644, 9-16-74	Repealed by 869
22-68	19-68	Ord. No. 644, 9-16-74	Repealed by 869
22-69	19-69	Ord. No. 644, 9-16-74	9.24.090
22-70	19-70	Ord. No. 644, 9-16-74	9.24.100
22-71	19-71	Ord. No. 644, 9-16-74	9.24.110
22-71.1	19-71.1	Ord. No. 706	9.24.120
22-71.2	19-71.2		Repealed by 713
22-71.3	19-71.3	Ord. No. 713, 7-7-80	9.16.160
22-71.4	19-71.4	Ord. No. 712, 5-19-80	9.12.090
22-72	19-72	Ord. No. 644, 9-16-74	9.12.100
22-73	19-73	Ord. No. 644, 9-16-74	9.12.110
22-74	19-74	Ord. No. 644, 9-16-74	9.24.130
22-75	19-75	Ord. No. 644, 9-16-74	9.24.140
22-76	19-76	Ord. No. 644, 9-16-74	9.24.150
22-77	19-77	Ord. No. 644, 9-16-74	9.24.160
22-78	19-78	Ord. No. 644, 9-16-74	9.24.170
22-79	19-79	Ord. No. 644, 9-16-74	9.24.180
22-80	19-80	Ord. No. 644, 9-16-74	9.24.190
22-81	19-81	Ord. No. 644, 9-16-74	9.24.200

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
22-82	19-82	Ord. No. 644, 9-16-74; Ord. No. 706	9.16.170
22-83	19-83	Ord. No. 689, 12-4-78	9.16.180
25-11	19A-11	Ord. No. 688, § 1, 11-6-78	2.48.010
25-12	19A-12	Ord. No. 688, § 2, 11-6-78	2.48.020
25-13	19A-13	Ord. No. 688, § 3, 11-6-78	2.48.030
25-14	19A-14	Ord. No. 688, § 4, 11-6-78	2.48.040
25-15	19A-15	Ord. No. 688, § 5, 11-6-78	2.48.050
25-16	19A-16	Ord. No. 688, § 6, 11-6-78	2.48.060
25-17	19A-17	Ord. No. 688, § 7, 11-6-78	2.48.070
23-2	20-2		12.28.010
23-3	20-3		12.28.020
23-4	20-4		12.28.030
23-5	20-5		12.28.040
23-6	20-6		12.28.050
23-7	20-7		12.28.060
23-8	20-8		12.28.070
23-9	20-9		12.28.080
23-9.1	20-9.1		12.28.090
23-10	20-10		12.28.100
23-11	20-11		12.28.110
23-12	20-12		12.28.120
23-13	20-13		12.28.130
23-14	20-14		12.28.140
23-15	20-15		12.28.150
23-16	20-16		12.28.160
23-17	20-17		12.28.170
24-1	21-1	Ord. No. 761, 11-18-85	5.32.010
24-2	21-2	Ord. No. 761, 11-18-85	5.32.020
24-3	21-3	Ord. No. 761, 11-18-85	5.32.030
24-4	21-4	Ord. No. 761, 11-18-85	5.32.040
24-5	21-5	Ord. No. 761, 11-18-85	5.32.050
24-6	21-6	Ord. No. 761, 11-18-85	5.32.060
24-7	21-7.	Ord. No. 761, 11-18-85	5.32.070
24-8	21-8	Ord. No. 761, 11-18-85	5.32.080

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
24-9	21-9	Ord. No. 761, 11-18-85	5.32.090
26-1	22-1	Ord. No. 645, 10-12-74	10.16.010
26-2	22-2	Ord. No. 645, 10-12-74	10.16.020
27-1	23-1	Ord. No. 806 (part), 3-2-92	5.36.010
27-2	23-2	Ord. No. 806 (part), 3-2-92	5.36.020
27-3	23-3	Ord. No. 806 (part), 3-2-92	5.36.030
27-4	23-4	Ord. No. 806 (part), 3-2-92	5.36.040
27-5	23-5	Ord. No. 806 (part), 3-2-92	5.36.050
27-6	23-6	Ord. No. 806 (part), 3-2-92	5.36.060
27-7	23-7	Ord. No. 806 (part), 3-2-92	5.36.070
28-1	24-1	Code 1958, § 9-601	12.12.010
28-2	24-2	Code 1958, § 9-602	12.12.020
28-3	24-3	Code 1958, § 9-603	12.12.030
28-4	24-4	Code 1958, § 9-604	12.12.040
28-5	24-5	Ord. No. 497, 11-19-62	9.16.190
28-6	24-6	Code 1958, § 9-501	12.04.010
28-7	24-7	Code 1958, § 9-502	12.04.020
28-8	24-8	Code 1958, § 9-503	12.04.030
28-9	24-9	Code 1958, § 9-504	12.04.040
28-10	24-10	Code 1958, § 9-509	12.04.050
28-11	24-11	Code 1958, § 9-505	12.04.060
28-12	24-12	Code 1958, § 9-506	12.04.070
28-13	24-13	Code 1958, § 9-507	12.04.080
28-14	24-14	Code 1958, § 9-508	12.04.090
28-15	24-15	Code 1958, § 9-101	12.08.010
28-16	24-16	Ord. No. 632, 12-3-73	12.08.020
28-17	24-17	Code 1958, § 9-102	12.08.030
28-18	24-18	Ord. No. 632, 12-3-73	12.08.040
28-19	24-19	Code 1958, § 9-105	12.08.050
28-20	24-20	Code 1958, § 9-301	12.20.010
28-21	24-21	Code 1958, § 9-201	12.20.020
28-22	24-22	Code 1958, § 9-202	12.20.030
28-23	24-23	Code 1958,§ 9-203	12.20.040
28-24	24-24	Code 1958, § 9-204	12.20.050
28-25	24-25	Code 1958, § 9-401	12.20.060

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
28-26	24-26	Code 1958, § 9-402	12.20.070
28-27	24-27	Code 1958, § 9-403	12.20.080
28-28	24-28	Code 1958, § 9-404	12.20.090
28-29	24-29	Code 1958, § 9-701	12.16.010
28-30	24-30	Code 1958, § 9-703	12.16.020
28-31	24-31	Code 1958, § 9-702	12.16.030
28-32	24-32	Code 1958, § 9-704	12.16.040
28-33	24-33	Code 1958, § 4-801	15.12.010
28-34	24-34	Code 1958, § 4-802	15.12.020
28-35	24-35	Code 1958, § 4-804	15.12.030
28-36	24-36	Code 1958, § 4-803	15.12.040
28-37	24-37	Code 1958, § 3-501	5.48.010
28-38	24-38	Code 1958, § 3-502	5.48.020
28-39	24-39	Ord. No. 716, 8-4-80	12.24.010
28-40	24-40	Ord. No. 716, 8-4-80	12.24.020
28-41	24-41	Ord. No. 716, 8-4-80	12.24.030
28-42	24-42	Ord. No. 716, 8-4-80	12.24.040
28-43	24-43	Ord. No. 716, 8-4-80	12.24.050
28-44	24-44	Ord. No. 716, 8-4-80	12.24.060
28-45	24-45	Ord. No. 716, 8-4-80	12.24.070
28-46	24-46	Ord. No. 716, 8-4-80	12.24.080
28-47	24-47	Ord. No. 716, 8-4-80	12.24.090
28-48	24-48	Ord. No. 716, 8-4-80	12.24.100
28-49	24-49	Ord. No. 716, 8-4-80	12.24.110
28-50	24-50	Ord. No. 716, 8-4-80	12.24.120
28-51	24-51	Ord. No. 716, 8-4-80	12.24.130
28-52	24-52	Ord. No. 716, 8-4-80	12.24.140
29-1	25-1	Code 1958, § 12-201; Ord. No. 511, 12-16-63	16.04.010
29-2	25-2	Code 1958, § 12-208; Ord. No. 511, 12-16-63	16.04.020
29-3	25-3	Code 1958, § 12-209; Ord. No. 511, 12-16-63	16.08.010
29-4	25-4	Code 1958, § 12-202; Ord. No. 511, 12-16-63	16.08.020

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
29-5	25-5	Code 1958, § 12-206; Ord. No. 511, 12-16-63	16.08.030
29-6	25-6	Code 1958, § 12-202; Ord. No. 511, 12-16-63	16.08.040
29-7	25-7	Code 1958, § 12-207; Ord. No. 511, 12-16-63	16.08.050
29-8	25-8	Code 1958, § 12-203; Ord. No. 511, 12-16-63; Ord. No. 663, 3-7-77	16.16.010
29-9	25-9	Code 1958, § 12-203; Ord. No. 511, 12-16-69 Ord. No. 663, 3-7-77	16.16.020
29-10	25-10	Code 1958, § 12-203; Ord. No. 511, 12-16-63	16.16.030
29-11	25-11	Code 1958, § 12-203; Ord. No. 511, 12-16-63	16.16.040
29-12	25-12	Code 1958, § 12-203; Ord. No. 511, 12-16-63	16.16.050
29-13	25-13	Code 1958, § 12-204; Ord. No. 511, 12-16-63	16.16.060
29-14	25-14	Code 1958, § 12-205; Ord. No. 511, 12-16-63	16.16.070
29-15	25-15		16.12.010
29-16	25-16		16.12.020
29-17	25-17		16.12.030
29-18	25-18		16.12.040
30-1	26-1	Code 1958, § 3-601	5.40.010
30-2	26-2	Code 1958, §§ 3-604, 3-614	5.40.020
30-3	26-3	Code 1958, § 3-616	5.40.030
30-4	26-4	Code 1958, § 3-617	5.40.040
30-5	26-5	Code 1958, § 3-618	5.40.050
30-6	26-6	Code 1958, § 3-619	5.40.060
30-7	26-7	Code 1958, § 3-612	5.40.070
30-8	26-8	Code 1958, § 3-622	5.40.080

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
30-9	26-9	Code 1958, § 3-611; Ord. No. 544, 3-6-67	5.40.090
30-10	26-10	Code 1958, § 3-605	5.40.100
30-11	26-11	Code 1958, § 3-610	5.40.110
30-12	26-12	Code 1958, § 3-607	5.40.120
30-13	26-13	Code 1958, § 3-609	5.40.130
30-14	26-14	Code 1958, § 3-620	5.40.140
30-15	26-15	Code 1958, § 3-621	5.40.150
31-1	27-1	Ord. No. 646, 2-3-75	13.08.005
31-1.1	27-1.1		13.08.010
31.2	27-2	Ord. No. 611, 1-2-73	13.08.020
31-3	27-3	Code 1958, § 11-101	13.08.030
31-4	27-4	Code 1958, § 11-102	13.08.040
31-5	27-5	Code 1958, §§ 11-103, 11-104	13.08.050
31-6	27-6	Code 1958, § 11-104	13.08.060
31-7	27-7	Code 1958, § 11-105	13.08.070
31-8	27-8	Code 1958, §§ 7-901, 7-902	13.08.080
31-9	27-9	Ord. No. 665, 3-21-77	13.08.090
31-10	27-10	Code 1958, § 11-201; Ord. No. 495, 6-4-62; Ord. No. 540, 1-3-67; Ord. No. 552, 2-19-68; Ord. No. 665, 3-21-77; Ord. No. 749, 9-6-83	13.08.100
31-11	27-11	Ord. No. 665, 3-21-77	13.08.110
31-12	27-12	Ord. No. 694, § 4	13.08.120
31-13	27-13		Repealed by 665
31-14	27-14	Code 1958, § 11-301	Repealed by 932
31-15	27-15	Code 1958, § 11-302	Repealed by 932
31-16	27-16	Code 1958, § 11-303	Repealed by 932

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
31-17	27-17	Code 1958, § 11-305	Repealed by 932
31-18	27-18	Code 1958, § 11-306	Repealed by 932
31-19	27-19	Code 1958, § 11-307	Repealed by 932
31-20	27-20	Code 1958, § 11-403	13.04.010
31-21	27-21	Ord. No. 664, 3-21-77	13.04.020
31-22	27-22	Code 1958, §§ 11-401, 11-402; Ord. No. 664, 3-21-77; Ord. No. 750, 9-6-83	13.04.030
31-23	27-23	Code 1958, §§ 11-404; Ord. No. 694, § 1	13.04.040
31-24	27-24	Code 1958, §§ 11-405; Ord. No. 694, § 2	13.04.050
31-25	27-25	Code 1958, §§ 11-406; Ord. No. 694, § 3	13.04.060
31-26	27-26	Code 1958, §§ 11-407; Ord. No. 694, § 4	13.04.070
31-27	27-27	Code 1958, §§ 11-408	13.04.080
31-28	27-28	Ord. No. 694, § 5	13.04.090
31-29	27-29	Code 1958, § 11-410	13.04.100
31-30	27-30	Code 1958, § 11-411	13.04.110
31-31	27-31	Code 1958, § 11-411	13.04.120
31-32	27-32	Res. No. 1672, 8-21-72; Ord. No. 605, 9-1-72	13.04.130
31-33	27-33	2-6-73	Repealed by 932
31-34	27-34	2-6-73	Repealed by 932
31-35	27-35	2-6-73	Repealed by 932
31-36	27-36	2-6-73	Repealed by 932

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
31-37	27-37	2-6-73	Repealed by 932
31-38	27-38	2-6-73	Repealed by 932
31-39	27-39	2-6-73	Repealed by 932
31-40	27-40	2-6-73	Repealed by 932
31-41	27-41	2-6-73	Repealed by 932
31-42	27-42	2-6-73	Repealed by 932
31-43	27-43	2-6-73	Repealed by 932
31-44	27-44	2-6-73	Repealed by 932
31-45	27-45	2-6-73	Repealed by 932
31-46	27-46	2-6-73	Repealed by 932
31-47	27-47	2-6-73; Ord. No. 697	Repealed by 932
31-48	27-48	2-6-73	Repealed by 932
31-49	27-49	2-6-73	Repealed by 932
31-50	27-50		13.16.010
31-51	27-51		13.16.020
31-52	27-52		13.16.030
31-53	27-53		13.16.040
31-54	27-54		13.20.010
31-55	27-55		13.20.020
31-56	27-56		13.20.030

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
32-1	28-1	Ord. No. 803, § 3 (part), 7-15-91	15.36.010
32-2	28-2	Ord. No. 803, § 3 (part), 7-15-91	15.36.020
32-3	28-3	Ord. No. 805, § 3 (part), 7-15-91	15.36.030
32-4	28-4	Ord. No. 805, § 3 (part), 7-15-91	15.36.040
32-5	28-5	Ord. No. 803, § 3 (part), 7-15-91	15.36.050
32-6	28-6	Ord. No. 803, § 3 (part), 7-15-91	15.36.060
32-7	28-7	Ord. No. 803, § 3 (part), 7-15-91	15.36.070
32-8	28-8	Ord. No. 803, § 3 (part), 7-15-91	15.36.080
32-9	28-9	Ord. No. 803, § 3 (part), 7-15-91	15.36.090
32-10	28-10	Ord. No. 803, § 3 (part), 7-15-91	15.36.100
32-11	28-11	Ord. No. 803, § 3 (part), 7-15-91	15.36.110
32-12	28-12	Ord. No. 803, § 3 (part), 7-15-91	15.36.120
32-13	28-13	Ord. No. 803, § 3 (part), 7-15-91	15.36.130
32-14	28-14	Ord. No. 803, § 3 (part), 7-15-91	15.36.140
32-15	28-15	Ord. No. 803, § 3 (part), 7-15-91	15.36.150
32-16	28-16	Ord. No. 803, § 3 (part), 7-15-91	15.36.160
32-17	28-17	Ord. No. 803, § 3 (part), 7-15-91	15.36.170

1997 Prior Code §	*1975 Prior Code §*	*Ordinance History*	*Herein*
32-18	28-18	Ord. No. 803, § 3 (part), 7-15-91	15.36.180
32-19	28-19	Ord. No. 803, § 3 (part), 7-15-91	15.36.190
32-20	28-20	Ord. No. 803, § 3 (part), 7-15-91	15.36.200
App. A. Art. I-IV	App. A. Art. I-IV	Ord. No. 794;Ord. No. 782; Ord. No. 776; Ord. No. 798	Not codified

ORDINANCE LIST AND DISPOSITION TABLE

Beginning with the 2009 Republication, this table will be replaced with the Code Comparative Table and Disposition List.

Ordinance Number	
810	Adds Art. V to 1975 prior code Ch. 2; amends § 2-17; renames 1975 prior code Division I of Art. III, Ch. 2 to be Personnel Systems, administration (2.56)
811	Adds Art. III to 1975 prior code Ch. 12, Clean Indoor Air Act relating to municipal buildings (Not codified)
812	Amends 1975 prior code § 4-15, fee schedule (5.12)
813	Adds 1975 prior code § 9-1.2; amends 1975 prior code § 9-1.1, courts, fines and imprisonment (Repealed by 819)
814	Repeals and replaces Art. IV of 1975 prior code Ch. 16, abandoned or inoperable vehicles (10.12)
815	Amends 1975 prior code § 6-6(h), adoption and redemption (Repealed by 826)
816	Amends 1975 prior code § 7-1, Uniform Building Code (Superseded by 885)
817	Cable television rates and regulations (5.20)
818	Adds 1975 prior code §§ 19-43.1-19-43.14, regulation of alarm devices and systems (8.04)
819	Adds 1975 prior code §§ 9-1.3, 9-1.4 and 9-1.5; repeals and replaces 1975 prior code §§ 9-1, 9-1.1 and 9-1.2, courts, fines and imprisonment (1.16)
820	Amends 1975 prior code § 2-5, regular meetings (2.04)
821	Repeals Art. V of 1975 prior code Ch. 16 (Repealer)
822	Adds 1975 prior code §§ 19-4.1-19-4.4, harassment and stalking (9.08)
823	Amends 1975 prior code § 9A-2, definitions (9.40)
824	Repeals and replaces 1975 prior code Ch. 15, minors generally (9.20)

Ordinance Number	
825	Resignation of trustee and appointment of successor trustee agreement for health care refunding revenue bonds (Special)
826	Repeals and replaces 1975 prior code Ch. 6, animals and fowl (6.04)
827	Repeals and replaces Division 2 of 1975 prior code Art. II, Ch. 9, municipal court (2.12)
828	Repeals 1975 prior code Ch. 17, noises (Repealer)
829	Amends 1975 prior code § 10-2; repeals 1975 prior code § 10-3, Uniform Fire Code (8.32)
830	Repeals and replaces Art. V of 1975 prior code Ch. 2; repeals Ord. 810, collective bargaining (Repealed by 857)
831	Amends Art. V of 1975 prior code Ch. 14, amusement license (5.16)
832	Bond issuance (Special)
833	Adds 1975 prior code § 9-20(e), work to, be performed by jail prisoners (2.16)
834	Repeals and replaces Division 3 of 1975 prior code Article IV, Ch. 2, park board (2.28)
835	Repeals and replaces 1975 prior code Ch. 20, parks and recreation (12.28)
836	Authorizes lease agreement with America Toll-Free (Special)
837	Adopts city code, 1997 (Special)
838	Repeals and replaces 1997 prior code §§ 31-9 and 31-10, sewer rates (13.08)
839	Repeals and replaces 1997 prior code §§ 31-21 and 31-22, water rates (13.04)
840	Repeals and replaces 1997 prior code § 22-53.1, noises (8.20)
841	Bond issuance (Special)
842	Repeals and replaces 1997 prior code § 29-1, definitions (16.04)

Ordinance Number	
843	Adds Art. V to 1997 prior code Ch. 29, subdivision of land (16.12)
844	Annexation (Special)
845	Amends 1997 prior code § 11 1-1, court automation fee (Repealed as of July 1, 2001)
846	Amends 1997 prior code § 20-14, penalties (10.04)
847	Amends 1997 prior code § 20-14.2, penalties (1.16)
848	Adds 1997 prior code § 4-7.1, alcoholic beverages (5.44)
849	Adds 1997 prior code § 22-58.3, possession of marijuana (9.28)
850	Adds 1997 prior code § 23-9.1, Harry McAdams Park (12.28)
851	Lease agreement with America Toll-Free (Special)
852	Adds Art. VII to 1997 prior code Ch. 31, hauled liquid waste (13.16)
853	Amends 1997 prior code §§ 19-2, 19-3 and 19-11, curfew hours (9.20)
854	Repeals and replaces Art. VI of 1997 prior code Ch. 18, Lodgers' Tax (3.08)
855	Lease agreement with Department of Public Safety (Special)
856	Lease agreement with Saddlebrook Park Company (Repealed by 858)
857	Repeals Art. V of 1997 prior code Ch. 2 and Ord. 830 (Repealer)
858	Repeals Ord. 856 (Repealer)
859	Amends 1997 prior code §§ 13-2, 13-5, 13-6 and 13-7, fire prevention (8.32)
860	Bond issuance (Special)
861	Annexation (Special)
862	Franchise grant to Leaco Rural Telephone Cooperative, Inc., telephone and communication services (Special)
863	(Not passed)

Ordinance Number	
864	Annexation (Special)
865	Amends 1997 prior code § 2-57, cemetery board (2.20)
866	Amends 1997 prior code § 2-49, park board (2.28)
867	Amends 1997 prior code § 4-4, alcoholic beverages (5.44)
868	Amends 1997 prior code §§ 21-3 and 21-8, nuisances (8.24)
869	Adds 1997 prior code §§ 22-7.1 and 22-63.1; amends 1997 prior code §§ 22-2, 22-4.1, 22-4.2, 22-5, 22-35, 22-54, 22-58.3, 22-61 and 22-62; repeals 1997 prior code §§ 22-14—22-21, 22-40, 22-56, 22-60, 22-67 and 22-68, miscellaneous offenses (1.12, 9.08, 9.12, 9.20, 9.28, 9.32)
870	Amends 1997 prior code §§ 28-1, 28-16, 28-19, 28-33 and 28-34, streets and sidewalks (12.08, 12.12, 15.12)
871	Authorizes execution of real estate sales contract (Special)
872	Amends 1997 prior code § 30-2, taxicabs (Tabled)
873	Amends 1997 prior code §§ 32-4, 32-8 and 32-17, floodplain management (15.36)
874	Amends 1997 prior code §§ 14-2—14-4 and 14-6, fireworks (8.12)
875	Authorizes execution of real estate sales contract (Special)
876	Adds 1997 prior code § 15-19.1; amends 1997 prior code §§ 15-1, 15-17 and 15-18, garbage and refuse (8.16)
877	Discharge elimination system permits (13.24)
878	Amends Charter and 1997 prior code Chapter 2, administration (Charter, 2.20, 2.28, 2.32, 2.44)
879	Amends 1997 prior code § 30-2, taxi cabs (5.40)
880	Adds 1997 prior code § 17-10, junkyards and junk dealers (5.24)

Ordinance Number	
881	Amends 1997 prior code §§ 20-17 and 20-32, motor vehicles and traffic (10.08, 10.12)
882	Amends 1997 prior code § 16-13, weeds (8.40)
883	Adds Art. VIII to 1997 prior code Chapter 31, regulations for water rationing (13.20)
884	Adds 1997 prior code §§ 20-17.1 and 20-17.2, stopping and parking (10.08)
885	Amends 1997 prior code Chapter 7, buildings (15.04, 15.08, 15.16, 15.20, 15.24, 15.28, 15.32)
886	Annexation (Special)
887	Amends § 2.12.030, municipal judge (2.12)
888	Amends § 9.12.090, offenses against public peace and decency (9.12)
889	Repeals and replaces § 1-6 of prior code, city districts (1.08)
890	Amends 1997 prior code § 11-1.1 (1.16.020), penalties (1.16)
891	Repeals 1997 prior code § 20-2 (1.16.050), penalties (1.16)
892	Amends 1997 prior code § 11-6 and 11-20 (2.16.020 and 2.16.050), Municipal Court (2.16)
893	Adds 1997 prior code § 31-54 [13.04.140] and amends 1997 prior code §§ 31-9, 31-10, 31-21—31-24, 31-26, 31-27 and 31-54 (13.04.020—13.04.050, 13.04.070, 13.04.080, 13.08.090, 13.08.100, 13.08.120 and 13.20.010), water and sewer service systems (13.04, 13.08, 13.20)
894	Enacts Municipal Infrastructure Gross Receipts Tax (Special)
895	Enacts Municipal Infrastructure Gross Receipts Tax (Special)
896	Amends 1997 prior code § 4-15 (5.44.160), local liquor tax fee schedule (5.44)
897	Amends 1997 prior code § 2-73 (2.32.010), City Planning Board (2.32)

Ordinance Number	
898	Amends 1997 prior code § 15-3 (8.36.030), waste material (8.36)
899	Amends 1997 prior code §§ 18-11—18-33 (5.04.010—5.04.120), business registration (5.04)
900	Amends 1997 prior code § 20-17.1 (10.08.040), traffic regulations (10.08)
901	Adds Ch. 1.01, adopting Hobbs Municipal Code (1.01)
902	Adds Ch. 13.28, water wells (13.28)
903	Adds § 6.04.090, animals (6.04)
904	Amends 1997 prior code § 31-30 (13.08.100), monthly sewer rates (13.08)
905	Amends §§ 13.04.020, 13.04.030, 13.08.090 and 13.08.100, water and sewer service systems (13.04, 13.08)
906	Authorizes real estate sales contract (Special)
907	Amends Ch. 2.40, Utilities Board (2.40)
908	Amends §§ 1.16.020 and 1.16.030; repeals §§ 1.16.040 and 1.16.050, penalties (1.16)
909	Amends § 6.04.030 and 6.04.040, animals (6.04)
910	Adds Ch. 2.60, Labor Management Relations (Repealed by 927)
911	Amends Ch. 2.28, Community Affairs Board (2.28)
912	Amends Ord. 646 and provides for the continued sale of industrial process water (Special)
913	Amends Ch. 15.28, building permit fee schedule (15.28)
914	Adds Ch. 15.14, landscaping (15.14)
915	Adds Ch. 3.10, economic development planning (3.10)
916	Repeals and replaces Ch. 2.56, personnel (2.56)
917	Authorizes execution and delivery of loan agreement (Special)
918	Authorizes execution and delivery of loan agreement (Special)
919	Authorizes execution and delivery of loan agreement (Special)

Ordinance Number	
920	Repeals § 10.08.120, traffic regulations (10.08)
921	Amends § 8.36.080, burning (8.36)
922	Amends [adds] Ch. 15.05; amends Chs. 15.04, 15.08, 15.16, 15.24 and 15.28, buildings and construction (15.04, 15.05, 15.08, 15.16, 15.24, 15.28)
923	Repeals and replaces Ch. 8.32, fire code (8.32)
924	Authorizes execution and delivery of loan agreement (Special)
925	Annexation (Special)
926	Enacts municipal environmental services gross receipts tax (Special)
927	Repeals and replaces Ch. 2.60, labor management relations (2.60)
928	Amends §§ 13.04.020—13.04.070 and 13.08.090—13.08.120, water and sewer service system (13.04, 13.08)
929	Annexation (Special)
930	Amends Ch. 5.04, business registration (5.04)
931	Repeals and replaces Ch. 5.20, temporary vendors (5.20)
932	Repeals and replaces Ch. 13.12; repeals §§ 13.08.130—13.08.180 and Ch. 13.16, industrial wastes and pretreatment (13.12)
933	Amends Ch. 6.04, animals generally (6.04)
934	Amends § 3.08.040, lodgers' tax (3.08)
935	Authorizes execution and delivery of loan agreement (Special)
936	Annexation (Special)
937	Amends § 12.28.080, city parks and recreation facilities (12.28)
938	Amends Ch. 1.16, general penalty (1.16)
939	Repeals § 9.12.030, offenses against public peace and decency (Repealer)
940	Bond issuance (Special)
941	Adds Ch. 5.10, sexually oriented businesses (5.10)

Ordinance Number	
942	Franchise grant to US Cable of Coastal Texas, L.P., one-way transmission of video programming (Special)
942-A	Annexation (Special)
943	Annexation (Special)
944	Authorizes the sale of appraised real property (Special)
945	Authorizes the sale of appraised real property (Special)
946	(Not passed)
947	Authorizes execution and delivery of loan agreement (Special)
948	Amends § 3.08.130, lodgers' tax (3.08)
949	Annexation (Special)
950	Amends Ch. 15.40, landscaping (15.40)
951	Approves real estate purchase agreement (Special)
952	Amends Ch. 8.16, garbage collection and disposal (8.16)
953	Amends § 10.08.040, supplementary traffic regulations (10.08)
954	Annexation (Special)
955	Amends § 8.16.160, garbage collection and disposal (8.16)
956	Annexation (Special)
957	Approves building purchase agreement (Special)
958	Adopts zoning ordinance (Special)
959	Establishes affordable housing program (3.14)
960	Annexation (Special)
961	Approves real estate purchase agreement (Special)
962	Amends § 15.24.040, mobile homes and manufactured homes (15.24)
963	Annexation (Special)
964	Annexation (Special)
965	Annexation (Special)
966	Amends § 2.56.820, personnel rules (2.56)
967	Annexation (Special)

Ordinance Number	
968	Annexation (Special)
969	Amends §§ 13.04.020—13.04.120, 13.08.020, 13.08.090, 13.08.100, 13.08.120, 13.12.010 and 13.20.010, various provisions related to water and sewer services (13.04, 13.08, 13.12, 13.20)
970	Approves real estate purchase agreement (Special)
971	Annexation (Special)
972	Adds Ch. 3.20, city procurement policy (3.20)
973	Amends § 3.08.140, lodgers' tax (3.08)
974	Establishes oil and gas activities ordinance (8.44)
975	Amends § 13.04.080, water service system (13.04)
976	Annexation (Special)
977	Approves real estate purchase agreement (Special)
978	Amends § 2.04.060; renames title of Ch. 2.04; repeals §§ 2.04.040, 2.04.050 and 2.04.080—2.04.110, city commission and mayor rules (2.04)

Beginning with the 2009 Republication, this table will be replaced with the Code Comparative Table and Disposition List.

CODE COMPARATIVE TABLE AND DISPOSITION LIST

This is a chronological listing of the ordinances of Hobbs, New Mexico beginning with the 2009 Republication, included in this Code.

Ordinance Number	Date	Description	Section	Section this Code
942	12-20-2005	Granting cable franchise to US Cable of Costal Texas, L.P.	I—XXI	Franchise App.
979	2-25-2008	An ordinance amending Ordinance 947 to authorize the City of Hobbs, New Mexico to increase the amount of its existing loan with the New Mexico Environment Department from $20,000,000.00 to $35,000,000.00 and to execute revised loan documents		Omitted
980	3-17-2008	An ordinance amending Title 15, Buildings and Construction, of the Hobbs Municipal Code regarding manufactured homes and the location and design of mobile home parks and recreational vehicle parks and establishing residential housing standards	1A Rpld	15.04.040 D.
			1B	15.05.010
			1C	15.16.050
			1D	15.24.010—15.24.110
981	3-17-2008	An ordinance consenting to the annexation of Seminole Highway - East Hobbs Annexation Area, which is presently not included in the City limits, as requested by City of Hobbs, Hobbs Land Development, LLC, Bokides Family Investments, LLC, and as recommended by the Planning Board		Omitted
982	3-17-2008	An ordinance adding Section 9.08.100 of Chapter 9 of the Hobbs Municipal Code regarding offenses against public peace, morals and welfare	Added	9.08.100
983	5- 5-2008	An ordinance to correct the annexation boundary of the Western States Development Group LLC Annexation No. 3		Omitted
983-A	7- 2-2008	An ordinance to amend Ordinance 983 to correct the annexation boundary legal description of the G-3 Development - Eagle Ridge Annexation		Omitted
984	5- 5-2008	An ordinance of the City of Hobbs, New Mexico regarding nuisance abatement and problem property forfeiture	Art. I(I, II)	8.48.010, 8.48.020
			Art. II(I—III)	8.48.030—8.48.050
			Art. III(I—IX)	8.48.060—8.48.140
985	5-19-2008	An ordinance authorizing the Mayor to execute a lease agreement with CASA of Lea County, Inc.		Omitted

Ordinance Number	Date	Description	Section	Section this Code
986	6- 2-2008	An ordinance authorizing the Mayor to execute a lease agreement with the State of New Mexico for the crime lab located at 111 North Turner		Omitted
987	6- 2-2008	An ordinance consenting to the annexation of Renaissaince Pointe - College Lane Annexation Tract, which is presently not included in the City limits, as requested by the property owners, and as recommended by the Planning Board		Omitted
988	6- 2-2008	An ordinance consenting to the annexation of Seminole Highway - East Hobbs Annexation Area, which is presently not included in the City limits, as requested by City of Hobbs, Hobbs Land Development, LLC, Bokides Family Investments, LLC, and as recommended by the Planning Board		Omitted
989	6- 2-2008	An ordinance consenting to the annexation of the Growney - West Bender Property, which is presently not included in the City limits, as requested by Mr. Tom Growney, owner, and as recommended by the Planning Board		Omitted
989-A	7-21-2008	An ordinance to amend Ordinance 989 to correct the annexation boundary legal description of the Growney-West Bender Annexation		Omitted
990	6-16-2008	Ordinance amending Chapters 13.04 and 13.08 of the Hobbs Municipal Code relating to water and sewer service	Added	13.04.013, 13.04.015, 13.04.017
				13.04.020—13.04.070
				13.08.021, 13.08.090, 13.08.100, 13.08.120
991	6-16-2008	Ordinance amending Chapter 8.32 of the Hobbs Municipal Code pertaining to the International Fire Code		8.32.010 A., 8.32.070
992	6-16-2008	Ordinance amending Chapters 15.04, 15.16 and 15.28 of the Hobbs Municipal Code pertaining Building Code adopted and general provisions and building permit fee schedule	3	15.04.010—15.04.040
				15.16.010—15.16.080
				15.28.010—15.28.090
993	7- 7-2008	An ordinance amending Section 8.24.030 of Chapter 8.24 of the Hobbs Municipal Code regarding nuisances generally		8.24.030
994	7- 7-2008	An ordinance adding to Section 9.16 of the Hobbs Municipal Code concerning elimination of unauthorized graffiti	Added	9.16.200
995	7- 7-2008	An ordinance adding to Section 9.16 of the Hobbs Municipal Code concerning unauthorized graffiti on personal or real property	Added	9.16.210

Ordinance Number	Date	Description	Section	Section this Code
996	7- 7-2008	An ordinance consenting to the annexation of the Navajo Drive - Acoma Street Annexation Tract, which is presently not included in the City limits, as requested by several property owners, and as recommended by the Planning Board		Omitted
997	7-21-2008	An ordinance adding to Section 9.17 of the Hobbs Municipal Code concerning sale, provision and use of glue, aerosol paint, paint stick, and broad-tipped indelible marker; penalties	Added	9.16.220
998	9- 8-2008	An ordinance adding to Section 9.20 of the Hobbs Municipal Code concerning parental responsibility for children	Added	9.20.140
999	9- 8-2008	An ordinance amending Chapters 9.16 and 9.24 of the Hobbs Municipal Code pertaining to offenses against property and theft, fraud and similar offenses		9.16.50, 9.24.020, 9.24.060, 9.24.070, 9.24.080, 9.24.100
1000	10- 6-2008	An ordinance adding to Chapter 9.24 of the Hobbs Municipal Code tampering with evidence	Added	9.24.210
1001	10- 6-2008	Ordinance amending Chapter 8.36 of the Hobbs Municipal Code pertaining to unsanitary premises		8.36.120
1002	10- 6-2008	Ordinance amending Chapter 8.40 of the Hobbs Municipal Code pertaining to weed control		8.40.030, 8.40.070
1003	10-20-2008	An ordinance consenting to the annexation of Lea County Event Center Property, which is presently not included in the City limits, as requested by Lea County Commission, property owner, and as recommended by the Planning Board		Omitted
1004	11-17-2008	An ordinance authorizing the execution and delivery of a water project fund loan/grant agreement by and among the New Mexico Water Trust Board and the New Mexico Finance Authority (the "lenders/grantors"), and the City of Hobbs (the "borrower/grantee"), in the amount of four hundred fifty thousand dollars ($450.00.00) evidencing an obligation of the borrower/grantee to utilize the loan/grant amount solely for the purpose of financing the costs of Phase II of the effluent reuse project including developing a preliminary engineering report to improve and expand the effluent reuse infrastructure, and solely in the manner described in the load/grant agreement; providing for payment of the loan amount solely from pledged revenues; certifying that the loan/grant amount,		Omitted

Ordinance Number	Date	Description	Section	Section this Code
		together with other fund available to the borrower/grantee, is sufficient to complete the project; approving the form of and other details concerning the loan/grant agreement; ratifying action heretofore taken; repealing all action inconsistent with this ordinance; and authorizing the taking of other actions in connection with the execution and delivery of the loan/grant agreement		
1005	12-15-2008	An ordinance amending Ordinance 980 regarding manufactured homes and the location and design of mobile home parks and recreational vehicle parks and establishing residential housing standards	1	15.24.050 D.
			2	15.24.100 B.
			3	15.24.020
1006	12-15-2008	An ordinance repealing Chapter 15.36 of the Hobbs Municipal Code and enacting a new Chapter 15.36 regarding Floodplain Management for the City of Hobbs	Art. 1(A—D)	15.36.010—15.36.040
			Art. 2	15.36.050
			Art. 3(A—G)	15.36.060—15.36.120
			Art. 4(A—D	15.36.130—15.36.160
			Art. 5(A—G)	15.36.170—15.36.230
1007	1- 5-2009	An ordinance repealing Sections 9.08.060 and 9.08.090 of the Hobbs Municipal Code relating to offenses against the person	Rpld	9.08.060, 9.08.090
1008	1- 5-2009	An ordinance consenting to the annexation of Suerte - Northwest Hobbs Annexation Area, which is presently not included in the City limits, as requested by Suerte Land Group, Inc. and City of Hobbs and as recommended by the planning board		Omitted
1009	2-23-2009	Ordinance amending Chapter 5.44 of the Hobbs Municipal Code relating to purchasing, attempting to purchase, receiving possessing, or permitting persons over the age of seventeen (17) years but under the age of twenty-one (21) years to be served with any alcoholic beverages		5.44.080
1010	4- 6-2009	Relating to amusement licenses		5.12.020
			Added	5.12.021
1011	5- 4-2009	A ordinance consenting to the Navajo-Fowler Annexation, which is presently not included in the City limits, as requested by several property owners, and as recommended by the Planning Board		Omitted
1012	5- 4-2009	An ordinance amending Title 16 of the Hobbs Municipal Code regarding subdivision of land	1 Rpld	16.12.040
			2 Added	16.12.040 A., B.
			3 Added	16.16.020 E.

CODE COMPARATIVE TABLE AND DISPOSITION LIST

OrdinanceNumber	Date	Description	Section	Sectionthis Code
1013	5- 4-2009	An ordinance modifying Chapter 3.08 of the Hobbs Municipal Code relating to lodgers' tax funds	Added	3.08.145
				3.08.130,3.08.150 A.
1014	5- 4-2009	An ordinance amending Chapter 8.24 of the Hobbs Municipal Code regarding nuisances generally		8.24.010—8.24.080
1015	8-17-2009	Regarding mandatory fees collected upon conviction		1.16.020
1016	8-17-2009	Enacting Ch. 2.58 regarding maximum number of City Employees	Added	2.58.001, 2.58.002
1017	8-17-2009	Authorizing the Mayor to execute a lease agreement with Lea County		Omitted
1018		Minimum Standards and providing for the establishment of Rural and Open Space Planning Districts	Amd. 1 Added	18.08.010—18.08.050
			Amd. 2 Rpld	6.04.09
1019	9-21-2009	Regarding Municipal Judge		2.12.030
1020	9-21-2009	Pertaining to injuring or tampering with vehicle	Added	9.16.230
1020A	10- 5-2009	Annexation		Omitted
1021	10-19-2009	Annexation		Omitted
1022	10-19-2009	Regarding noise variances		8.20.050
1023	10-19-2009	Authorizing the Mayor to execute a lease agreement with the Department of Public Safety		Omitted
1024	11- 2-2009	Repealing Title 6 and establishing a new Title 6, Animals	Rpld	6.04.010—6.04.090
			Added	6.04.010—6.04.490
			Added	6.05.010—6.05.060
			Added	6.06.010—6.06.030
			Added	6.08.010
			Added	6.09.010—6.09.040
1025	11- 2-2009	Regarding ambulance rates and charges		8.08.050
1026	12- 7-2009	Pertaining to the Utilities Board		2.40.020
1027	12- 7-2009	Regarding street infrastructure required with residential building permits and mobile home placement permits, as recommended by the Planning Board	1 Added	16.12.040C.
			2 Added	16.12.040D.
1028	1- 4-2010	Repealing Ordinance No. 1019 and amending Ch. 2.12 regarding Municipal Judge		2.12.030—2.12.050
1029	2-16-2010	Relating to Lodgers' Tax Funds		3.08.145
				3.08.130
				3.08.150A.
1030	2-16-2010	Regarding City Jail work detail		2.16.050
1031	3- 1-2010	Regarding violations, penalties		8.20.060
1032	6-21-2010	Regarding suspension of sentence		2.16.050

OrdinanceNumber	Date	Description	Section	Sectionthis Code
1033	6-21-2010	Regarding motor vehicle operation while intoxicated		1.16.060
1034	7- 6-2010	Regarding resisting, evading or obstructing a police officer		9.04.080
1035	8-16-2010	Real estate purchase agreement		Omitted
1036	9-20-2010	Adding Ch. 18.12, regarding tower regulations	1—24 Added	18.12.010—18.12-240
1037	10- 4-2010	Regarding disorderly conduct		9.12.020
1038	1- 3-2011	Regarding criminal trespass		9.16.060
1039	2-28-2011	Relating to parking in handicapped zones	Rpld	10.08.070
1040	2-28-2011	Regarding offenses against public peace and decency	Added	9.12.120
1041	3- 7-2011	Regarding subdivision of land	1 Rpld	16.16.050B.
			2 Added	16.16.050B.
			3 Added	16.16.050E.
1042	4- 4-2011	Regarding drugs and drug paraphernalia		9.28.010, 9.28.020
			Added	9.28.030—9.28.080
1043	4- 4-2011	Adding Ch. 3.25 regarding capping and annual funding of social service agencies	Added	3.25.010—3.25.030
1044	4- 4-2011	Approving a real estate purchase agreement in Hobbs Industrial Air Park to Nova Mud Inc.		Omitted
1045	6-27-2011	Consenting to the West Hobbs annexation		Omitted
1046	6-20-2011	Regarding designation of city districts		1.08.010
1047	10-17-2011	Regarding building code adoption and general provisions		15.04.010
1048	10-17-2011	Regarding commercial building permit fee waivers	Added	15.04.030F.
1049	11-7-2011	Approving a real estate lease of Hobbs Industrial Air Park to Nova Mud Inc.		Omitted
1050	12- 5-2011	Regarding the city affordable housing act	Dltd	3.14.010—3.14.070
5762(Res.)	12- 5-2011	Transfer of Cable Franchise		Franchise App.
			II—IX Added	3.14.010—3.14.080
1051	12-19-2011	Consenting to Bloom annexation		Omitted
1052	12-19-2011	Regarding lodger's tax		3.08.0303.08.140, 3.08.145
1053	4-16-2012	Regarding planning board		2.32.010
1054	4-16-2012	Pertaining to the fire code	Amend	8.32.010—8.32.050
			Dltd	8.32.060
			Amend	8.32.070
1055	4- 2-2012	Approving a real estate purchase agreement in Hobbs Industrial Park		Omitted
1056	11- 5-2012	Regarding capping the annual funding of social service agencies	Added	3.25.025
1057	12- 3-2012	Regulating the distribution and sale of THC-like substances, commonly called spice	Added	5.50.010—5.50.060

OrdinanceNum-ber	Date	Description	Section	Sectionthis Code
1058	1- 7-2013	Regarding paid time off	Added	2.56.816—2.56.816.5
			Rpld	2.56.850—2.56.870
			Rpld	2.56.930 (tit.)
				2.56.030, 2.56.430, 2.56.715, 2.56.800—2.56.815, 2.56.820—2.56.835, 2.56.845, 2.56.875, 2.56.885, 2.56.895, 2.56.900, 2.56.910—2.56.925, 2.56.935, 2.56.940
1059	2- 4-2013	Regarding drugs and drug paraphernalia		9.28.010A.
1060	2- 4-2013	Regarding off-street parking		15.20.030
1061	2-19-2013	Authorizing the execution and delivery of the water project fund loan/grant agreement		Omitted
1062	2-19-2013	Regarding Building Code adoption and general provisions		15.04.010
1063	3-18-2013	Regarding electrical permit fee schedule		15.28.090
1064	3-18-2013	Regarding Lodgers' Tax		3.08.030, 3.08.145
1065	4-15-2013	Regarding the number of City employees		2.58.001
1066	5- 6-2013	Regarding drugs and drug paraphernalia		9.28.010A.
1067	7- 1-2013	Granting to Zia Natural Gas Company a franchise		Franchise App.
1068	9- 3-2013	Consenting to the Host annexation		Omitted
1069	9- 3-2013	Approving a railroad spur lease and use agreement		Omitted
1070	11-18-2013	Consenting to the Zia Crossing Subdivision, Phase 1 annexation		Omitted
1071	12- 2-2013	Regarding the rate of accumulation of paid time off		2.56.820
1071-A	4- 7-2014	Consenting to the Millen/Grimes Annexation		Omitted
1072	5- 5-2014	Regarding maximum number of City of Hobbs employees		2.58.001, 2.58.002
1073	7- 7-2014	Approving a real estate purchase agreement in Hobbs Industrial Air Park to Mewbourne Oil Company		Omitted
1074	7- 7-2014	Establishing columbarium fees at Prairie Haven Memorial Park		12.32.060

OrdinanceNum-ber	Date	Description	Section	Sectionthis Code
1075	7- 7-2014	Regarding Building Code adoption and general provisions		15.04.010, 15.28.080
			Added	15.28.081
1076	7- 7-2014	Regarding drugs and drug paraphernalia		9.28.010A.
6182(Res.)	8-18-2014	Proclaiming special election on Dec. 9, 2014, regarding a Charter amendment requiring voter photo identification for municipal elections		Omitted
1077	10- 6-2014	Changing the name of Ocotillo Park Golf Course to Rockwind Community Links		12.28.100, 12.28.120
			Added	12.28.115
1078	10- 6-2014	Consenting to the Zia Crossing Subdivision, Phase 2 annexation		Omitted
1079	11- 3-2014	Repealing and reenacting Ch. 13 governing water and sewer rates and regulations	Rpld	13.04.010—13.04.140, 13.08.005—13.08.120, 13.12.010—13.12.250, 13.20.010—13.20.030, 13.24.010—13.24.030, 13.28.010
			Added	13.04.010—13.04.140, 13.08.010—13.08.120, 13.10.010—13.10.090, 13.12.010—13.12.250, 13.20.010—13.20.040, 13.24.010, 13.24.020, 13.28.010
1080	11-17-2014	Regarding the City procurement policy	Rpld	3.20.010—3.20.070
			Added	3.20.010—3.20.095
1081	12-15-2014	Regarding real property at 3425 North, N.W.		Omitted
1082	4- 6-2015	Repealing Fire Zones	Rpld	Ch. 15.08
1083	5- 4-2015	Regarding Water Fund		Omitted
1084	5-19-2015	Revision to Procurement Policy	Added	3.20.040B, 3.20.080(10), 3.20.080(11)
			Renumbered	3.20.040B—3.20.040S as 3.20.040C—3.20.040T
1085	5-19-2015	Regarding nepotism		Failed
1086	6- 1-2015	Regarding Capping and Funding of Social Service Agencies		3.25
1087	7- 6-2015	Regarding Washington Place		Omitted
1088	8- 3-2015	Regarding Chapter 15.05		Tabled

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1089	8- 3-2015	Regarding boundary replat		Omitted
1090	8-17-2015	Regarding Miller annexation		Omitted
1091	10-19-2015	Regarding real estate purchase agreement HIAP		Omitted
1092	;en3-21-2016	Regarding sale of real property, Eddy-Lea Energy Alliance, LLC		Omitted
1093	4- 4-2016	Regarding Hobbs Industrial Air Park Board	Rpld	Ch. 2.44
1094	4-18-2016	Regarding Signs		Ch. 15.05, Ch. 15.32

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***Note—**The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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