

AGENDA
City of Hobbs Planning Board – Regular Meeting
March 20, 2018 at 10:00 AM

W. M. “Tres” Hicks, Chairman
Bill Ramirez
Brett Drennan
Larry Sanderson

Guy Kesner, Vice Chairman
Bobby Shaw
Dwayne Penick

Tentative Agenda for the Planning Board Regular Session Meeting to be held on Tuesday, March 20, 2018 at 10:00 AM at the City of Hobbs Annex Building, First Floor Commission Chambers located at 200 E. Broadway, Hobbs, NM 88240.

AGENDA

- 1) Call To Order.**
- 2) Review and Consider Approval of Agenda.**
- 3) Review and Consider Approval of Minutes.**

February 20, 2018 – Regular Meeting
March 2, 2018 – Special Meeting

- 4) Communications from Citizens.**
- 5) Review and Consider front yard setback variance request for a structure to be located at 107 E. Taos, as submitted by Christina Astorga, property owner. At this location Taos Street is classified as a Minor Residential requiring a front yard setback of 21' from the property line; the proposed structure is requested to be located 0' from the property line requiring a 21' variance.**
- 6) Review and Consider variance from MC 15.32.030-A1, as submitted by property owner, Playa Escondida Housing, LLLP. A monument sign located at the property line is allowed a maximum height of 2' the proposed monument sign has a height of 3'.**
- 7) Review and Consider an encroachment agreement for property located at 1021 E. Yeso, as submitted by property owner, Playa Escondida Housing, LLLP. The monument sign as proposed would encroach upon public property by 5' due to the radius located in the corner.**
- 8) DISCUSSION ITEM**
 - A) Review & discuss Sub-committees work on the proposed Right – of – way management Ordinance.**
 - B) Review & discuss the proposed amendment to MC 5.04 & 5.20 as recommended for approval of the City Commission by the City of Hobbs Planning Board at the December 15, 2015 regular meeting.**
- 9) Adjournment.**

The City will make every effort to provide reasonable accommodations for people with disabilities who wish to attend a public meeting. Please notify the City at least 24 hours before the meeting. Telephone 397-9351.

“Notice is hereby given that a quorum of the Hobbs City Commission may be in attendance at this meeting.”

**PLANNING BOARD MEETING
MINUTES
February 20, 2018**

The Hobbs Planning Board met on February 20, 2018 at 10:00 a.m. at City of Hobbs Annex Building, First Floor Commission Chambers, located at 200 E. Broadway, Hobbs, NM 88240 with Guy Kesner, Vice Chairman presiding.

Members Present:

Guy Kesner, Vice Chairman
Bill Ramirez
Brett Drennan
Bobby Shaw
Dwayne Penick

Members Absent:

Tres Hicks, Chairman
Larry Sanderson

Also present were members of the public and City staff as follows:

Kevin Robinson, Development Director
Todd Randall, City Engineer
Julie Nymeyer, Staff Secretary
Alberto Caballero

Shawn Williams, Fire Marshal
Bruce Reid, County Planner
Seborn South, Zia Gas
Members of the public

1) Call To Order.

Vice Chairman Kesner called the meeting to order at 10:02 am.

2) Review and Consider Approval of Agenda.

The first item of business was to review and approve the Agenda for the February 20, 2018 meeting. Mr. Kesner asked if there were any changes or additions to the Agenda. Mr. Ramirez made a motion, seconded by Mr. Drennan to approve the agenda as presented. The vote on the motion was 5-0 and the motion carried.

3) Review and Consider Approval of Minutes.

January 16, 2018 – Regular Meeting

Mr. Kesner asked if everyone has had a chance to read the Regular Meeting Minutes from January 16, 2018? Mr. Ramirez made a motion, seconded by Mr. Penick to approve the minutes as presented. The vote on the motion was 5-0 and the motion carried.

4) Communications from Citizens.

There was no communications from citizens.

5) Review and Consider Preliminary Plat Approval for Zia Crossing Unit 6, as submitted by property owner, Black Gold Estates, LLC., and as previously approved by the Planning Board on July, 21 2015.

Mr. Robinson said this is a preliminary plat subdivision that staff and the Planning Board has review previously granting plat approval on July 21, 2015. He said this is located directly south of Zia Crossing Unit 2, Phase 1. Mr. Shaw asked if there were any changes from the last time the Board saw this? Mr. Robinson said there are no changes of substance. He said they have reduced the number of lots. He said that does not affect any of the engineering of this project. Mr. Kesner said he did not have any questions or concerns about this. The Board concurred. Mr. Penick made a motion, seconded by Mr. Ramirez to approve the Preliminary Plat approval. The vote on the motion was 5-0 and the motion carried.

6) Review and Consider Preliminary & Final Plat Approval for a proposed subdivision located southeast of the intersection of College Lane and Ja-Rob and within the municipalities extra-territorial jurisdiction, as submitted by property owner, Barbara Cox.

Mr. Robinson said this in an ETJ subdivision. He said there are extensive staff notes. He said Jarob is a minor collector. He said the roadway has been dedicated to the south of this development. He said the issue is the development of the necessary roadway. He said the county has a subdivision regulation for block lengths at 1320 and the municipality has a regulation at 880. He said historically the municipality has been granting variances at 1320. He said this block length is 1630. Mr. Kesner asked if it was a roadway or an easement behind the properties on College Lane? Mr. Robinson said it is a private easement.

Mr. Shaw said Gary Eidson could not be here today or Ms. Cox so if you have questions he will abstain from voting but can stand for questions. He said this has gone in front of the County twice with a lot of discussion and alterations. He said the easement on the far south also had a change to make sure the setback was proper in the event Desert Sage is ever brought through to Jarob. He said they need some clear direction on this easement.

Mr. Robinson said both the county and city regulations require a cross street to be developed with this subdivision. He said the municipality is responsible for their subdivision rules and regulations. He said because it is in the ETJ they have some latitude. He said there are provisions within the county subdivision rules and regulations which allows the street to not be put in but an agreement has to be in place dealing with the development of the street. Mr. Shaw said the reason they put such a large setback is in the event they have to use the entire 60 feet from that tract in the future instead of the 30 feet. He said the question is if they word this for "public infrastructure" Mr. Pyeatt said they will have to have County Commission approval.

Mr. Ramirez asked if the county has approved this yet? Mr. Shaw said they have not got a final plat because they are waiting on additional information. Mr. Kesner said the discussion the County Planning Board had was what Mr. Shaw said to take 60 feet from tract 4 would

be burdensome upon this developer because in reality it should be a shared roadway between tract 4 and the property owners below them. Mr. Robinson said this entire subdivision is burdened by the roadway. He said because of the block length the entirety of a roadway should be within the subdivision boundaries should be proposed.

Mr. Bruce Reid said the county cannot develop that road to a full paved road because it states in the sub development regulations if a road is not used in two years it cannot be built and that it is very unlikely that road will be built in two years. He said he does not see any reason for the public or the surface and subsurface on it. He said he did not see any reason why it needed to be notated on the plat. Mr. Robinson said it is incumbent upon them to be compliant with the adopted rules and regulations or change the rules and regulations. Mr. Shaw said that needs to be done in a lot of areas because they have encumbered them to the point it is a burden in the process. Mr. Kesner said that he thinks if Desert Sage ever develops out then that burden is on that developer. He said they can secure the easement.

Mr. Penick made a motion to approve the Preliminary and Final Plat with the provision to accept the 30 feet and put a deed restriction with the option of the other 30 feet at a certain easement encumbered at an agreed upon price. Mr. Ramirez said he thought they should table the motion until it goes through the County. Mr. Shaw said it will come back to this Board again anyway. Mr. Ramirez made a motion, seconded by Mr. Drennan to table this item for further information. The vote on the motion was 4-0 with Mr. Shaw abstaining. The motion carried. Mr. Penick left the meeting at 10:56 am.

- 7) **Review and Consider placement of a Subdivision Monument Sign within property that will be dedicated to the public, specifically the median area of Ranchland Boulevard, with the Final Plat approval of Tanglewood Unit Two at Ranchview Estates Subdivision.**

Mr. Robinson said this item is a proposed placement of a monument sign. He said it is a hybrid major collector which has a median in the roadway. He said the developer would like to place a monument sign to his subdivision within the right-of-way. He said there are two things the Board needs to consider. He said this is a major collector and the hybrid development was allowed to eliminate some cost on the developer for traffic that will be increased in the future. He said the medians could go away when the area to the north and the east develop out. He said this ordinance states the public right of ways are for public infrastructures first and franchisee's second and private infrastructures third. He said this is a 10 year permit granted to an individual for the occupancy in the ROW. Mr. Shaw said this is very common in other communities and they could put it in the Developer's Agreement instead of the plat. Mr. Shaw made a motion, seconded by Mr. Drennan to amend the Developer's Agreement between the developer and the City of Hobbs to include the placement of the Monument Sign in the Row of Way. The vote on the motion was 4-0 and the motion carried.

- 8) **Review and Consider placement of a Subdivision Monument Sign and bollards\posts within property that will be dedicated to the public with the Final Plat approval of the Meadows Subdivision, Unit 1.**

Mr. Robinson said this is a preliminary plat that the Planning Board granted preliminary plat approval but this item has not gone to the City Commission. He said the monument

signs and bollards can be noted on the preliminary plat and discussed when it goes to Commission. Mr. Kesner asked if there was a developer's agreement? Mr. Robinson said no. Mr. Robinson said they can talk to the developer about a developer's agreement and with developer's maintaining the ROW for a 10 year period. Mr. Kesner said they can vote on this but his suggestion is to do a developer's agreement. Mr. Robinson said if your comments are to include this infrastructure on the preliminary plat as presented to the Commission and address the maintenance of this particular infrastructure through a developer's agreement. Mr. Ramirez made a motion, seconded by Mr. Drennan to approve the final plat and include the maintenance of this particular infrastructure through a developer's agreement. The vote on the motion was 4-0 and the motion carried.

- 9) **Review and Consider variance from MC 15.32.030 & 15.32.140 concerning the Reconstruction of an existing non-compliant Billboard located northeast of the intersection of Carlsbad Highway and Goings Lane.**

Mr. Robinson said tract B and book 954 and page 479 is the property that is being discussed. He said there is an existing billboard and free standing sign on the same property. He said it is not compliant with our sign code. He said the sign code states during the permit process any existing non-compliant issues have to be corrected. He said the developer is proposing to reconfigure the billboard and make it into a digital billboard. Mr. Ramirez asked if it was the church's billboard? Mr. Robinson said no, it is not the church's billboard but it is located on the church's property. He said staff cannot issue a permit to change this sign with it being noncompliant without a variance. Mr. Drennan made a motion, seconded by Mr. Ramirez to approve the variance. The vote on the motion was 4-0 and the motion carried.

- 10) **DISCUSSION ITEM – Review & discuss Sub-committees work on the proposed Right – of – way management Ordinance.**

Mr. Robinson discussed the Right of Way management ordinance. He said there have been some changes and it will probably be April before it is brought to the Board to be voted on. Mr. Kesner said it looked good and said he appreciates everyone's work. Mr. Shaw said he just wanted to make sure the utility companies were included in the meetings. Mr. Robinson said at this time Seborn South with Gas Company has been coming to the meetings.

- 11) **Adjournment.**

With nothing further to discuss the meeting adjourned at 11:33 am.

Guy Kesner, Vice Chairman

**PLANNING BOARD
SPECIAL MEETING MINUTES
March 2nd, 2018**

The Hobbs Planning Board met on March 2, 2018 at 11:30 a.m. at City of Hobbs Annex Building, Third Floor Room A302 & A304 Floor located at 200 E. Broadway, Hobbs, NM 88240 with Mr. W.M. "Tres" Hicks, Chairman presiding.

Members Present:

W.M. "Tres" Hicks, Chairman
Dwayne Penick
Bill Ramirez
Bobby Shaw

Members Absent:

Guy Kesner, Vice Chairman
Larry Sanderson
Brett Drennan

Also present were members of the public and City staff as follows:

Kevin Robinson, Project Manager
Julie Nymeyer, Staff Secretary

Todd Randall, City Engineer
Dennis Holmberg

1) Call To Order.

Mr. W.M. "Tres" Hicks Chairman called the meeting to order at 11:33 am.

2) Review and Consider Approval of Agenda.

The first item of business was to review and approve the Special Meeting Agenda for the March 2, 2018 meeting. Mr. Hicks asked if there were any changes or additions to the Agenda? Mr. Robinson said there were no changes. Mr. Ramirez made a motion, seconded by Mr. Shaw to approve the agenda. The vote on the motion was 4-0 and the motion carried.

3) Review and Consider side yard setback variance request for a residential single family housing unit to be located at 5201 Big Red Road, as submitted by ABS Homes, property owner. This particular lot, Lot #54 of Zia Crossing Subdivision Unit 4, is located in the southwest corner of Big Red Road and Paddock Road both classified as a Minor Residential. The side yard setback at this location should be 10' from the property line; the proposed structure is requested to be located 5' from the property line requiring a 5' variance.

Mr. Robinson said this is a side yard setback variance for a single residential family housing unit at 5201 Big Red Road. He said the property owner was issued a building permit and the permit was issued without the 10 foot side yard setback. He said there are provisions within the IRC if a Building Official makes an error. He said it states any permit given in error can be readdressed. He said the side setback should be 10 foot and it is 5 foot. He said the forms are up and ready to be poured. He said it will affect this lot only. He said this variance will

grant a front yard setback also. Mr. Hicks said the 21 foot setback is mainly for the driveway. Mr. Shaw said this floor plan was larger than what should have been on this lot. Mr. Jessie Stuard, President of ABS Homes said they would not put any more houses this size on corner lots. Mr. Ramirez made a motion, seconded by Mr. Penick to approve the variance. The vote on the motion was 4-0 and the motion carried.

4) Adjournment.

With nothing further to discuss the meeting adjourned at 11:53 am.

W.M. "Tres" Hicks, Chairman

March 20, 2018
Planning Board Regular Meeting

- 5) **Review and Consider front yard setback variance request for a structure to be located at 107 E. Taos, as submitted by Christina Astorga, property owner. At this location Taos Street is classified as a Minor Residential requiring a front yard setback of 21' from the property line; the proposed structure is requested to be located 0' from the property line requiring a 21' variance.**



VARIANCE APPLICATION

Application Date: 2-16-17 Variance for (circle one): front yard / side yard
Property Owner: Christina J Astorga Phone: 575-399-9812
Address of proposed structure: 107 East Taos Hobbs NM
Subdivision (if known): _____ Lot & Block # (if known): _____
Type of proposed structure: Carport Dimensions of proposed structure: _____
Are subdivision covenants and/or deed restrictions available? _____ if so, please attach a copy.

The existing front/side setback for the structure at the above address is _____ feet. If the variance is approved, the new front/side setback with the front improvement will be _____ feet.

* The Planning Board of the City of Hobbs has established a procedure to require each applicant for a setback variance to notify property owners **within 150 feet** of the proposed improvement. In addition, front-yard setbacks of less than 10' for buildings (excluding carports) are generally not permitted.

Addresses of existing carports/fences/porches in vicinity (if any):

Please attach the following documents:

- Copy of Building Permit Application.
- **Sketch Plan** showing dimensions of existing and proposed improvements and distances from proposed improvement to sidewalk, curb, and/or edge of street.
- Copy of Covenants and/or Deed Restrictions, if any.
- Signature Sheet containing signatures of adjacent property owners within **150 feet** of above referenced lot.

Return completed form to:
City-Hall - Planning Division
200 E. Broadway St.
Hobbs, NM 88240
P: 575-397-9232
F: 575-397-9227

Christina J Astorga
Property Owner Signature

Date

CITY OF HOBBS, NM
PLANNING DIVISION
VARIANCE APPLICATION
 (To Front and/or Side Yard Setback Requirement)
Adjoining Property Owner Notification

Note: The Planning Board of the City of Hobbs has established a procedure to require each applicant for a front or side yard setback variance to notify property owners within **150 feet** of the proposed improvement. In addition, front-yard setbacks of less than 10' for buildings (excluding carports) are generally not permitted.

Date: 2-16-17

Applicant: Christina Astorga

Phone: 575 399 9812

Neighboring Property Owner:

For your information, a variance application has been submitted to build a structure in the front or side setback at:

Applicant address: 107 East Taos Hobbs NM.

Address of proposed structure: 107 East Taos Hobbs NM

Subdivision (if known): _____ Lot & Block # (if known): _____

Type and dimensions of proposed structure (see attached drawing for details): 23X29

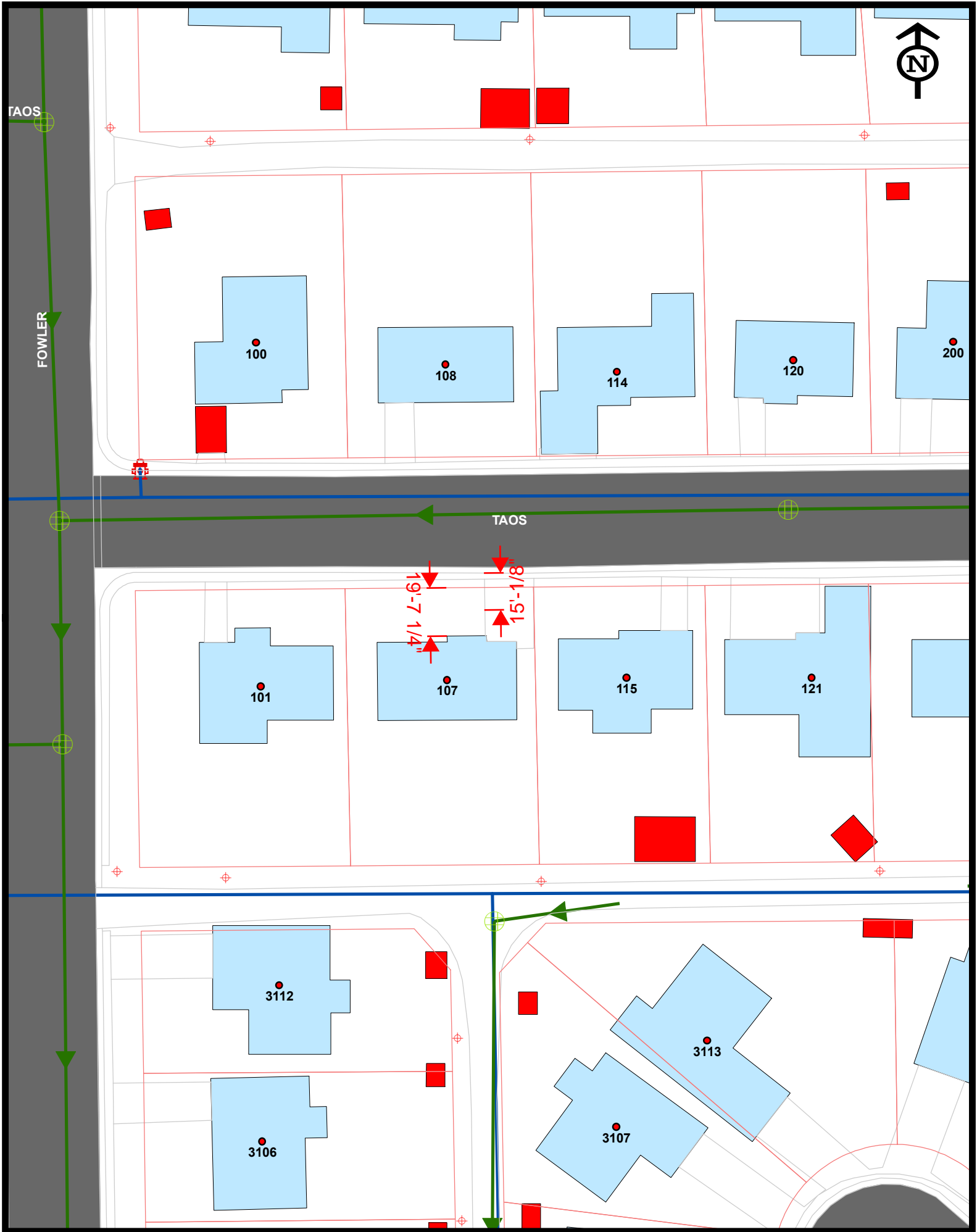
The existing front/side setback for the structure at the above address is _____ feet. If the variance is approved, the new front/side setback with the front/side improvement will be _____ feet.

If any adjoining property owner has questions, please call the Planning Division at 397-9232. The City reserves the right to contact adjacent property owners to verify accuracy of signatures.

Signatures of adjoining property owners and acknowledgement of request:

Adjacent Property Owner Name(s)	Address	Signature(s)	Phone #	Do you support request? Y / N
Rebecca Rayzel	101 E. Taos	Rebecca Rayzel	575-318-4043	Y
Donald Tugman	120 E. Taos	Donald Tugman	575-441-1890	Y
Mary Perez/mup	207 E. TAOS	Mary Perez	575-408-2398	X
Jesus A. Sosa	213 E. TAOS	Jesus A. Sosa	575-390-3881	Y
M. Chanley	218 E. TAOS	M. Chanley	575-390-0865	Y
Sarah Brizeno	121 E. TAOS	Sarah Brizeno	575-390-5161	Y
Mina P. Rod	106 E. Taos	Mina P. Rod	575-399-9756	Y
Cheryl Wingo	118 E. TAOS	Cheryl Wingo	575-409-0435	Y

*Deed Restrictions, if available, are located in the Planning Division.



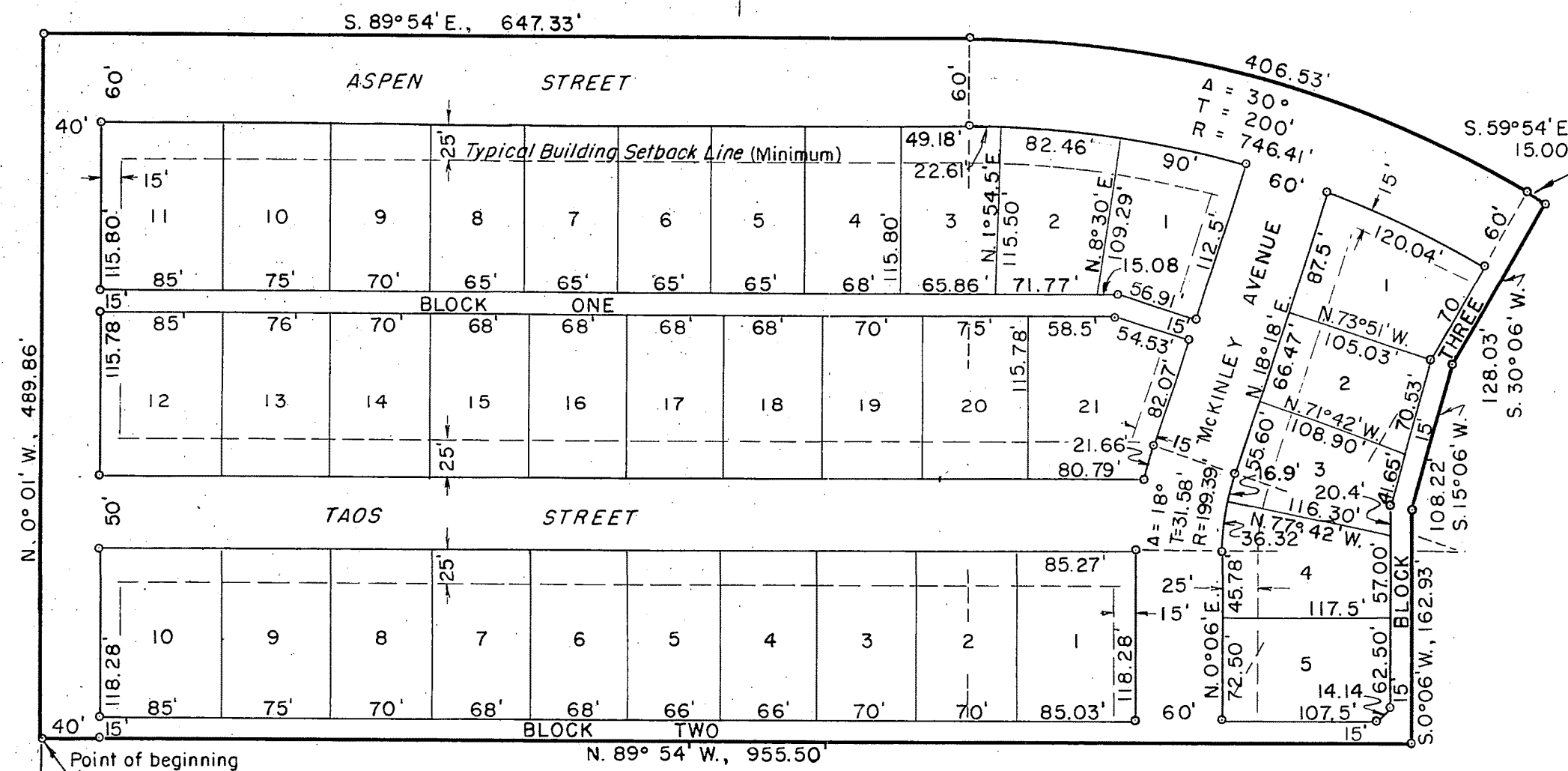
BELMONT ADDITION UNIT I

TO THE CITY OF HOBBS, LEA COUNTY, NEW MEXICO.

LEGEND:

- 1/2" Pipe
 - 3/8" Ø Steel pin
- Scale: 1 inch = 100 feet

JOHN W. SHEARMAN
WATER RIGHT CONSULTANT- SURVEYOR
413 North First Street
Lovington, New Mexico.



CERTIFICATE OF SURVEY.

I, John W. Shearman, a Registered Land Surveyor certify that I prepared the above plat of BELMONT ADDITION, UNIT I and that the same was prepared from field notes of actual surveys made under my direction and I do further certify that the boundaries thereof and the street and block corners therein are defined by permanent markers as shown and the same are true and correct to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have placed my hand and seal this 13th day of August, 1966.

John W. Shearman
John W. Shearman, R. L. S. No. 1559

CERTIFICATE OF PLANNING COMMISSION APPROVAL:

The foregoing plat of the BELMONT ADDITION, UNIT I to the City of Hobbs, Lea County, New Mexico and dedication was approved and accepted this 12 day of August, 1966.

CITY PLANNING COMMISSION OF HOBBS, NEW MEXICO

Charles P. Miller Chairman
James W. Updegrave Secretary

CERTIFICATE OF MUNICIPAL APPROVAL:

STATE OF NEW MEXICO)
COUNTY OF LEA) SS.

I, Hazel F. Anderson, the duly appointed, qualified and acting City Clerk of the City of Hobbs, New Mexico, do hereby certify that the foregoing plat of BELMONT ADDITION, UNIT I to the City of Hobbs, Lea County, was approved by the City Commission of the City of Hobbs by Resolution No. 1899 on the 6th day of Sept., 1966.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the corporate seal of the City of Hobbs this 6th day of Sept., 1966.

Hazel F. Anderson
City Clerk

DEDICATION:

STATE OF NEW MEXICO)
COUNTY OF LEA) SS.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned owners and proprietors of the following tract of land lying and being in Hobbs, New Mexico, more particularly described as follows, to-wit:

The surface estate of a tract of land described as beginning at a point N. 0° 01' W., 3,135 feet from the Southwest corner of the Southeast Quarter (SE 1/4) of Section 22, Township 18 South, Range 38 East, N. M. P. M., Lea County, New Mexico; Thence N. 0° 01' W., 489.86 feet; Thence S. 89° 54' E., 647.33 feet; Thence East-Southeasterly along the arc of a curve with a radius of 776.41 feet and a central angle of 30 degrees a distance of 406.53 feet; Thence S. 59° 54' E., 15.00 feet; Thence S. 30° 06' W., 128.03 feet; Thence S. 15° 06' W., 108.22 feet; Thence S. 0° 06' W., 162.93 feet; Thence N. 89° 54' W., 955.50 feet to the point of beginning

and have caused the same to be subdivided and platted as shown on the attached Plat with their free consent and in accordance with their desire and into what is known and is hereby designated and named BELMONT ADDITION, UNIT I to the City of Hobbs, Lea County, New Mexico and all the streets and alleys through said property are hereby and by this instrument, and by the filing of this Dedication and Plat, dedicated to the use and benefit of the public.

IN WITNESS WHEREOF, the said owners and proprietors have hereunto set their hands and seals this 15th day of August, 1966.

A. T. Bintz Earnest Phillips
A. T. Bintz Earnest Phillips
Pauline R. Bintz Kathleen Phillips
Pauline Bintz Kathleen Phillips

SUBSCRIBED AND SWORN TO before me this 15th day of August, 1966.
My Commission Expires: April 23, 1970
Harold H. Welch
Notary Public

STATE OF NEW MEXICO)
COUNTY OF LEA) SS.

On this 15th day of August, 1966 before me personally appeared A. T. Bintz and Pauline Bintz, husband and wife and Earnest Phillips and Kathleen Phillips, husband and wife, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of August, 1966.

My Commission Expires: April 23, 1970
Harold H. Welch
Notary Public

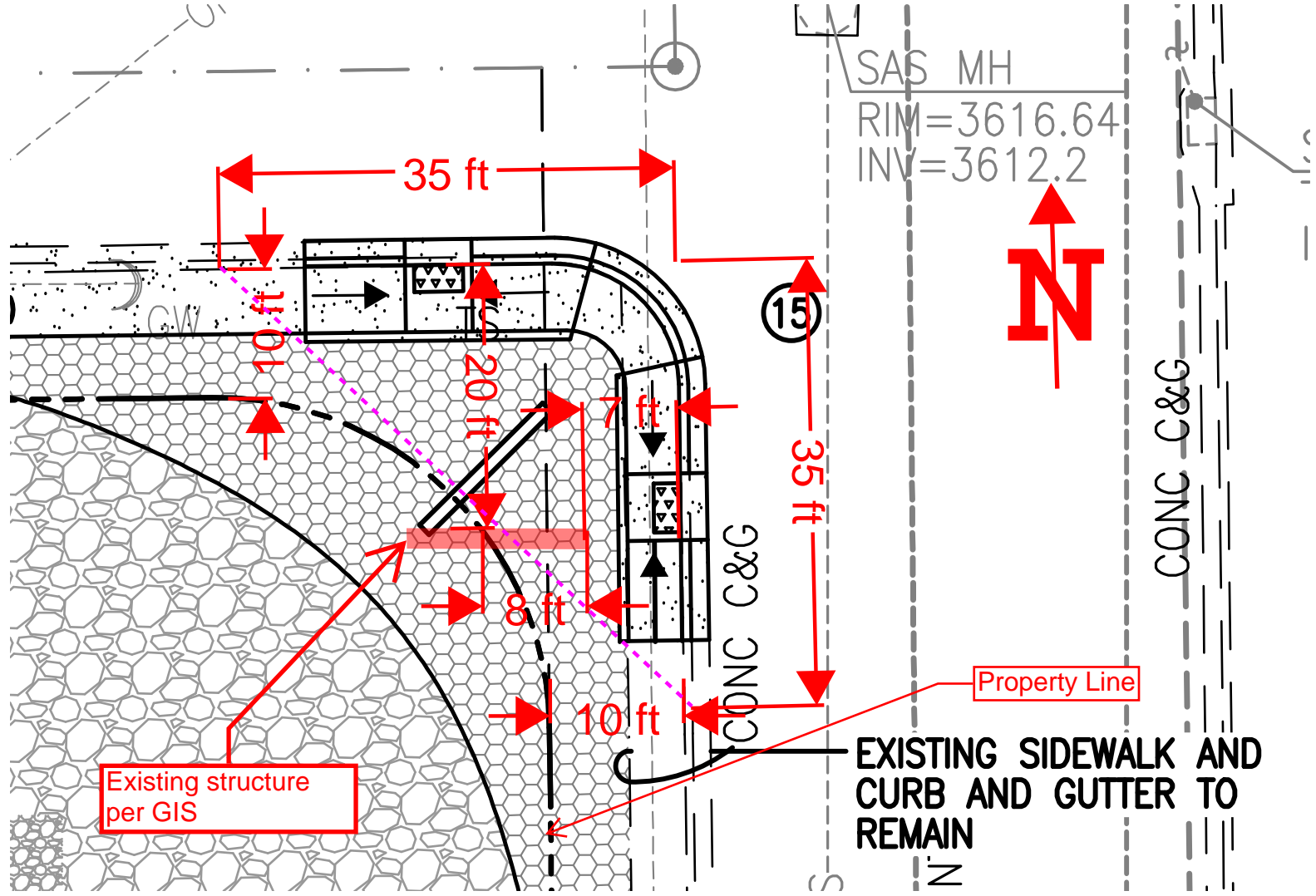


+/- 8'

March 20, 2018
Planning Board Regular Meeting

- 6) **Review and Consider variance from MC 15.32.030-A1, as submitted by property owner, Playa Escondida Housing, LLLP. A monument sign located at the property line is allowed a maximum height of 2' the proposed monument sign has a height of 3'.**







E Ye-o 1000 DR

STOP

10' Min

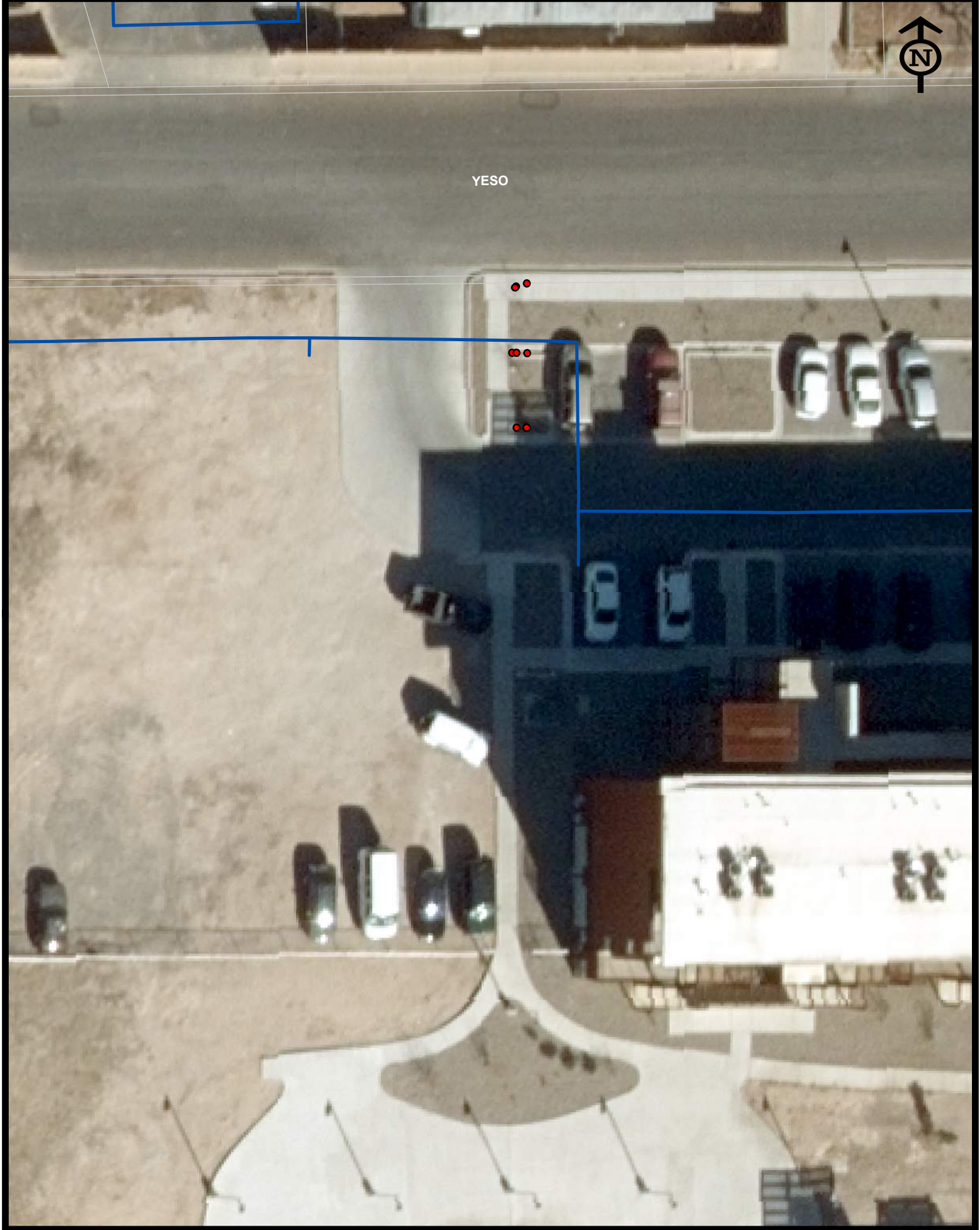
7'

20'

3' Max above top of Curb



YESO





March 20, 2018
Planning Board Regular Meeting

- 7) **Review and Consider an encroachment agreement for property located at 1021 E. Yeso, as submitted by property owner, Playa Escondida Housing, LLLP. The monument sign as proposed would encroach upon public property by 5' due to the radius located in the corner.**



Lea County

GIS INTERNET REPORT

Page 1 of 3



Assessment Information

OWNER NUMBER: 205596

UPC CODE: 4000200146002

PARCEL NUMBER: 4000200146002

Owner Information	
Owner:	PLAYA ESCONDIDA HOUSING LLLP
Mailing Address:	2727 LBJ FREEWAY SUITE 806 DALLAS TX 75234
Property Address:	

Subdivision Information	
Name:	
Unit:	
Block	
Lot:	

Legal Information
TRACT 1 BEING 3.96 AC AKA



Lea County, New Mexico Disclaimer

Information deemed reliable but not guaranteed. Copyright ©2012.
MAP TO BE USED FOR TAX PURPOSES ONLY. NOT TO BE USED FOR CONVEYANCE.



Lea County

GIS INTERNET REPORT

Page 2 of 3



Other Information			
Taxable Value:	\$369,613.00	Deed Book:	1932
Exempt Value:	\$0.00	Deed Page:	411
Net Value	\$369,613.00	District:	161
Livestock Value:	\$0.00	Section:	26
Manufactured Home Value:	\$0.00	Township:	18
Personal Property:	\$0.00	Range:	38
Land Value:	\$88,839.00	Date Filed:	
Improvement Value:	\$1,020,000.00	Most Current Tax:	\$10,422.26
Full Value:	\$1,108,839.00	Year Recorded:	2014

Square Foot and Year Built listed only to be used for comparative purposes, NOT to be used for commerce.

Lea County, New Mexico Disclaimer

Information deeded reliable but not guaranteed. Copyright ©2012.
MAP TO BE USED FOR TAX PURPOSES ONLY. NOT TO BE USED FOR CONVEYANCE.

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (hereinafter "Agreement"), entered into this ____ day of _____, 2018, between Playa Escondia Housing, LLC, 2727 LBJ Freeway Suite 806, Dallas, TX 75234, (hereinafter "Citizen") and the City of Hobbs, New Mexico, a New Mexico Municipal Corporation (hereinafter "City").

RECITALS:

WHEREAS, Citizen is the owner of certain real property at 1021 E. Yeso in Hobbs;

WHEREAS, the parties recognize that the Citizen has constructed improvements upon the property described in Exhibit A which encroach into the City's street right-of-way on Jefferson.

NOW, THEREFORE, in consideration of the following covenants, premises, and other considerations, the parties agree as follows;

1. Citizen has constructed an improvement which does encroach upon the right-of-way property the City owns that is designated as Jefferson. The improvements are more particularly described in Exhibit A.
2. The City agrees to permit the encroachment of the improvement at the location described in Exhibit A on the City's right-of-way property, and approve the Encroachment Easement (Exhibit C) attached hereto, provided the Citizen complies with the terms of this Agreement.
3. City Use of City's Property and City Liability: The City has the right to enter upon the City's Property at any time and perform whatever maintenance, inspection, repair, modification or reconstruction it deems appropriate without liability to the Citizen.
4. Citizen's Responsibility for Improvements: The Citizen will be solely responsible for maintaining, repairing and reconstruction of the Improvement, as deemed necessary either by the Citizen or the City. The Citizen will be responsible for paying all related costs. The Citizen agrees to not permit the Improvements to become or constitute a hazard to the public health or safety, and to keep the Improvement properly maintained. Citizen further agrees not to interfere with the City's use of the City's Property, and to comply with all applicable laws, ordinances and regulations. Citizen agrees that no addition or extension to the Improvement will be constructed, without the written consent of the City.
5. Removal or Relocation of Improvements: At some time in the future, the City may require the Improvement to be removed or relocated from City's Property. Such relocation would occur at such time that the street is required to be reconstructed or widened, as deemed necessary by the City to insure proper and efficient street Improvements; or for utility improvement deemed necessary by the City.
6. Financial Responsibility for Removal and Relocation: If and when the Improvement is required to be relocated in the future, financial responsibility for removal and relocation of the Improvement will be the sole responsibility of the Citizen to relocate the Improvement from the City's right-of-way property.
7. Condemnation of Improvement: If Citizen allows or permits the Improvement to become deteriorated or to become a threat to the public health, safety and welfare; then City may institute condemnation proceedings to remove Citizen's Improvement from City's Property. If any part of the Citizen's improvement are ever condemned by the City, the Citizen will forego all claims to compensation for any portion of Citizen's structure which encroaches on City Property.
8. Notice: For purposes of giving formal written notice to the Citizen, Citizen's address shall be the address of record for ownership of property, as listed in the official records of the County Clerk's Office for

Lea County, New Mexico. Notice may be given to the Citizen either in person or by mailing the notice by certified, return receipt U.S. mail, postage paid. Notice will be considered to have been received by the Citizen, when the return receipt mail card is received by the City.

9. Indemnification: The Citizen covenant and agree that they will indemnify and save the City harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or death or damage to property on or off the premises, arising or resulting from Citizen's actions, usage and property located on the City right-of-way property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

10. Term: This Agreement may be terminated in writing at any time by the Citizen or by the City, without cause. Termination by either party shall be effective ninety (90) days after mailing by a party of written notice of termination to the other party.

11. Binding on Citizen's Property: The obligations of the Citizen set forth herein shall be binding upon the Citizen, his/her heirs, assigns and successors and on Citizen's Property, and constitute covenants running with Citizen's Property until released by the City.

12. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

13. Changes to Agreement: Changes to this Agreement are not binding unless made in writing and signed by both parties.

14. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

15. Extent of Agreement: Citizen understands and agrees that the Citizen is solely responsible for ascertaining whether Citizen's Improvement encroaches upon the property or facilities of any other entity and that by entering into this Agreement, the City makes no representations or warranties that the City's property is the only property affected by the encroachment.

16. Attorney's Fees and Costs: In the event this matter is litigated the Court shall award reasonable attorney fees to the prevailing party, notwithstanding in-house counsel represents a party.

17. Compliance with New Mexico State Statutes: The City states that it has complied with the requirements of Section 3-54-1, NMSA, 1978, as amended, and that it has authorization to purchase real property pursuant to the Hobbs Municipal Code, as amended.

Done and approved on the date first written above.

THE CITY OF HOBBS

CITIZEN

Mayor Sam D. Cobb

Playa Escondia Housing, LLC

ATTEST:

APPROVED AS TO FORM:

Jan Fletcher, City Clerk

Michael Stone, City Attorney

STATE OF NEW MEXICO)
 (SS.
COUNTY OF LEA)

The foregoing was acknowledged before me this ____ day of _____, 2018 by Sam D. Cobb, as Mayor of the City of Hobbs, a New Mexico Municipal Corporation, to me personally known, who being by me duly sworn did say that he is the duly elected Mayor and signing officer of the City of Hobbs, and that said instrument was signed on behalf of said Municipal Corporation, and Sam D. Cobb acknowledged said instrument, and acknowledged that he executed the same as his free act and deed and on behalf of the respective Corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid and year first written above.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO)
 (SS.
COUNTY OF LEA)

The foregoing was acknowledged before me this ____ day of _____, 2012 by _____, as _____ of the Playa Escondia Housing, LLC a New Mexico Corporation, to me personally known, who being by me duly sworn did say that he is the duly authorized _____ of the corporation, and that said instrument was signed on behalf of said corporation, and _____ acknowledged said instrument, and acknowledged that he\she executed the same as his\her free act and deed and on behalf of the respective Corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid and year first written above.

Notary Public

My Commission Expires:

March 20, 2018
Planning Board Regular Meeting

8) DISCUSSION ITEM

A) Review & discuss Sub-committees work on the proposed Right – of – way management Ordinance.

Proposed Ordinance

City of Hobbs Municipal Code entitled "Right of Way Management Regulations"

Chapter 12.20 RIGHT OF WAY MANAGEMENT
REGULATIONS

- 12.20.010 Title.
- 12.20.020 Legislative findings.
- 12.20.030 Purposes.
- 12.20.040 Rules of Construction.
- 12.20.050 Definitions.
- 12.20.060 Authority.
- 12.20.070 Reservation of rights; police power.
- 12.20.080 Authorization required.
- 12.20.090 Construction standards.
- 12.20.100 Placement of facilities.
- 12.20.110 Relocation of facilities.
- 12.20.120 Restoration.
- 12.20.130 Work permits.
- 12.20.140 Business license.
- 12.20.150 Reimbursement of costs.
- 12.20.160 Administration and permitting to use space within the right of way.
- 12.20.170 Reserved.
- 12.20.180 Reports and records.
- 12.20.190 Bond of letter of credit.
- 12.20.200 Insurance.
- 12.20.210 Enforcement.
- 12.20.220 Indemnification.
- 12.20.230 Severability.

12.20.010 Title.

This chapter is known and may be cited as the CITY OF HOBBS RIGHT OF WAY MANAGEMENT ORDINANCE.

12.20.020 Legislative findings.

The City Commission hereby finds and declares:

A. That the public rights of way within the city can be partially occupied by infrastructures owned by the public, infrastructures owned by franchisees of the public, utilized for the delivery of service so franchised and infrastructures owned by the private sector, utilities and other service entities for facilities used in the delivery, conveyance, and transmission of services rendered by private or for profit entities, to the enhancement of the health, welfare, and general economic well-being of the city and its citizens;

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ownership!

B. That the public rights of way within the city are physically limited so that proper management by the city is necessary to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses, to prevent foreclosure of future uses through premature exhaustion of available right of way capacity, and to minimize the inconvenience to the public from such facilities' construction, emplacement, relocation, and maintenance in the rights of way;

C. That the use of the public rights of way by multiple users renders more pressing the city's right of way management responsibilities;

D. That the public rights of way within the city are valuable public property acquired and maintained by the City at great expense to the taxpayers;

E. That the right to occupy portions of such public rights of way for limited times for the business of providing utility and information services is a valuable economic asset; and

F. The city's street and alley rights-of-way are owned or held by the city primarily for the purpose of pedestrian and vehicular passage and for the city's provision of essential public safety services, including police and fire services; the city's provision of public health services, including solid waste removal, sanitary sewer and storm drainage services; and other municipal operations and the means to support and provide those services — these interests are paramount.

12.20.030 Purposes.

The city commission adopts this chapter to better:

A. Manage a limited resource to the long term benefit of the public;

B. Recover and allocate the costs of managing the public rights of way;

C. Minimize inconvenience to the public occasioned by the emplacement and maintenance of facilities in the public rights of way;

D. Prevent premature exhaustion of capacity in the public rights of way to accommodate communications and other services; and

E. Promote competition in the provision of communications service in the city and ensure that citizens have a wide variety of services available to them by establishing clear and consistent rules by which providers may occupy the public rights of way.

12.20.040 Rules of construction.

A. 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 include the plural number; and the masculine gender includes the feminine gender.

B. The words "shall" and "will" are mandatory, and "may" is permissive.

C. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

D. Any conflict between this chapter and a city franchise agreement in favor of the terms of the city franchise agreement.

E. Nothing in this chapter shall be construed to create a special duty by the city to any owner or operator of a facility within the right of way.

F. Nothing in this chapter shall be construed to create any property interest or right to occupy space within the right of way whatsoever.

G. In the case of conflict, the rights granted to an owner or operator by federal or state law shall not be impaired.

12.20.050 Definitions.

For the purposes of this chapter the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Unless otherwise expressly stated, words not defined herein shall be given the meanings set forth in title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

AFFILIATE: When used in relation to any person, means another person who de facto or de jure owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

Authorization
in definition.

CITY: City of Hobbs, New Mexico, and any agency, department, or agent thereof.

CITY MANAGER: The person appointed pursuant to section 6.2 of this code or his/her designee.

CITY ENGINEER: The city engineer or the city engineer's designee.

COMMUNICATIONS FACILITY OR COMMUNICATIONS SYSTEM: Facilities for the provision of "communications services", as that term is defined herein.

COMMUNICATIONS SERVICES: Telecommunications services, interactive computer services, and any other services involving the transmission of information by electronic or optical signals, except that it shall not include cable service as that term is used in the cable communications policy act of 1984, as amended.

COMMISSION: The principal governmental body of the city of Hobbs, New Mexico, its officers, or a representative person or entity as may be designated to act on its behalf.

FACILITY OR FACILITIES: Any tangible asset in the public right of way used to provide drainage, sanitary or storm sewer, gas, electric, water or communication/information services.

FEDERAL COMMUNICATIONS COMMISSION OR FCC: The federal communications commission or any successor.

FRANCHISE: An authorization granted by the city to an person-entity to construct, maintain, or emplace facilities generally upon, across, beneath, and over the public rights of way in the city, subject to the terms and conditions specified in a franchise agreement. The term also includes an authorization by the New Mexico PRC or other appropriate authority or as otherwise authorized by law.

FRANCHISE AGREEMENT: The contract entered into between the city and a grantee that sets forth the terms and conditions under which the franchise may be exercised.

GRANTEE: A person that has been granted a franchise by the city or right to operate within Hobbs or such other parties that wish to locate facilities in the right of way.

INFRASTRUCTURE OR INFRASTRUCTURES: to have the same meaning as FACILITY OR FACILITIES.

OWNER OR OPERATOR OF A FACILITY: Any person which has a possessory interest in such facility or which controls or is responsible for, through any arrangement, the management and operation of such facility.

PERMITTEE: A person who has received a permit to locate a facility or facilities within the right of way.

PERSON: Any individual, corporation, partnership, association, joint stock company, trust, governmental entity, or any other legal entity, but not the city

PUBLIC RIGHTS OF WAY: The surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, public easement, or right of way within the city in which the city now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a facility.

TELECOMMUNICATIONS: This term has the meaning ascribed to it in 47 USC section 153(43). TELECOMMUNICATIONS SERVICE: This term has the meaning ascribed to it in 47 USC section 153(46).

EXCAVATION ROW WORK PERMIT: An authorization issued by the city to enter upon the public rights of way at specified times and places to erect, construct, emplace, or otherwise work on facilities.

ROW OCCUPANCY EASEMENT PERMIT: An easement permit granted to a person, outside of a franchise agreement, specifying the location and terms allowing an emplacement of facilities within public right of ways.

12.20.060 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.

12.20.070 Reservation of rights; police power

All rights and privileges granted in a franchise agreement are subject to the police powers of the city and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate a grantee and the construction, operation and maintenance of the grantee's system, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the city shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right of way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

Further, nothing in this chapter shall prevent the City from constructing, repairing or replacing sewers; grading, paving, repairing, or replacing any right of way; or constructing, repairing, or replacing any other public work or facility, or from performing work pursuant to weather related activities or response to natural disasters. Nothing shall prevent the City from altering the layout or design of a right of way for public safety reasons.

~~(Permit)~~
12.20.080 Authorization required.

- A. No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property without first obtaining from the city the necessary authorization required under local, state or federal law.
- B. An owner or operator of facilities may be required to hold different authorizations for its use of the public rights of way to provide different services. For example, and without limitation, the owner or operator of facilities that provides both cable service and wireless internet service must obtain both a franchise agreement and any other authorization needed to provide wireless internet service.

12.20.090 Construction standards.

- for additional infrastructure*
- A. Compliance with Regulations; Safety Practices: Construction, operation, maintenance, and repair of facilities shall be in accordance with all applicable law and regulation, and with sound industry practice. All safety practices required by law shall be used during construction, maintenance, and repair of facilities.
 - B. Excavations: No holder of any work permit for any facility shall dig, trench, or otherwise excavate in the public rights of way without complying with the provisions of the New Mexico one call system.
 - C. Prevention Of Failures And Accidents: An owner or operator shall at all times employ at least ordinary care and shall install and maintain using commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.
 - D. Most Stringent Standards Apply: In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards).
 - E. Construction Schedule: Every owner or operator shall, at least forty five (45) days prior to commencing significant construction activity (including a significant rebuild, upgrade, or repair to existing facilities)—emergencies excepted—upon, across, beneath, or over any public right of way in the city or other city property, strive to provide to the city in writing the date on which the owner or operator anticipates it will begin construction and the approximate length of time required for such construction. This timeframe represents a preference only.
 - F. Coordination Of Construction With City: Prior to the erection, construction, upgrade, or rebuild of any facilities in the public right of way, the owner or operator of such facilities shall first submit to the city for written approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required by the city, together with maps and plans indicating the proposed location of all such

specify

facilities. The owner or operator shall provide the best information it has in such reasonable format as may be specified by the city engineer for the city's planning function. No such erection or construction shall be commenced by any person until approval therefor has been received from the city. At the time of such approval, the city shall inform the grantee whether the reports and other information described by subsection 12.20.180(C)(1) of this chapter shall be required with respect to the approved construction.

- G. **Coordination of Construction With Third Parties:** Developers or other parties planning the construction or opening of streets in the city shall provide reasonable notice to the city and to the owners or operators of facilities subject to this chapter so that joint trenching and joint emplacement of facilities may be conducted wherever practicable. Such owners and operators shall similarly provide notice to each other and to any relevant developers, for the same purpose. The city shall maintain a list of owners and operators of facilities subject to this chapter for reference by other parties.
- H. **City Engineer Stakeholder Meetings:** The city engineer may establish recurring meetings of businesses who make use of the right of way for their facilities and contractors who perform such work to discuss ongoing and upcoming projects to further the efforts of coordinating projects within the right of way.
- I. **Contractors and Subcontractors:** Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of facilities in the public rights of way must be properly licensed and insured under laws of the state and all applicable local ordinances. Each contractor or subcontractor shall have the same obligations with respect to its work as an owner or operator of the facility would have if the work were performed by the owner operator. An owner or operator shall be responsible for all activities carried out by its contractors, subcontractors and employees at the owner's or operator's request.
- J. **Publicizing Proposed Construction Work:** The owner or operator of facilities in the public rights of way shall notify the public prior to commencing any construction, other than emergency repair or overhead work that, in its determination, will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. Written notice of such construction work shall be delivered to the city at least one week prior to commencement of that work. Notice shall be provided to those persons most likely to be affected by the work in at least one (1) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, by clearly legible signage at the location of the proposed work, or in any other manner reasonably calculated to provide adequate notice.

12.20.100 Placement of facilities.

- A. All facilities shall be installed and located to minimize interference with the rights and convenience of other property owners.
- B. An owner or operator of a facility shall not place facilities, equipment, or fixtures where they will interfere with any other facilities, or obstruct or hinder in any manner the

various utilities serving the residents of the city or their use of any public rights of way.

- C. The city may reasonably direct the specific placement of facilities to ensure that users of the public rights of way do not interfere with each other and that the public rights of way are used safely and efficiently. For example, in the case of an owner or operator of a fiber optic network that is not a franchisee, the city engineer may order extra ducts for fiber optic cable be installed for use by the city or other grantees or permittees when, in the opinion of the city engineer, the subject right of way is too congested due to existing facilities and space limitations or will likely be used by at least four other entities including the city for running fiber optic cable. Such company shall then certify to the city engineer the additional cost of said installation per linear foot which the city shall pay. Other future users of the surplus duct will be charged an upfront, one-time fee to locate in said duct to recover a proportional share of the city's upfront and carrying costs as calculated by the city engineer. This fee will be in addition to, and not in lieu of, any recurring, or one-time fee charged by city for location within the right of way.
- D. Every grantee or permittee that ceases operating or maintaining any facility shall, upon written request of the city within two (2) years of the cessation of maintenance of such facility, promptly remove it. Should the grantee or permittee neglect, refuse, or fail to remove such facility, the city may remove the facility at the expense of the grantee or permittee. The obligation to remove shall survive the termination of the franchise or permit for a period of two (2) years and shall be bonded. The city engineer may determine that it is in the best interests of the city to allow the facility to be wholly or partially abandoned in place.
- E. No owner or operator of a facility shall erect new aerial plant, other than to repair existing plant, in or on a public right of way in which both electric and telephone service providers have placed their lines underground, or in an area which the city has by ordinance forbidden new aerial plant to be constructed or existing aerial plant to be maintained.
- F. A grantee or permittee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A grantee or permittee may not erect poles, conduits, or other facilities in public rights of way without the express permission of the city. Copies of agreements for use of conduits or other facilities shall be filed with the city upon city request.
- G. To the extent practicable, aboveground equipment placed on private property shall be placed at the location requested by the property owner. An owner or operator shall provide affected homeowners with at least ten (10) days' advance written notice of its plans to install such equipment, and shall make reasonable efforts to confer with such homeowners before any work is done.
- H. Whenever aboveground equipment is placed on private property within a utility easement, the grantee or permittee shall provide landscaping camouflage reasonably acceptable to the city engineer, at the grantee's or permittee's expense. It shall be the

~~grantee's or permittee's responsibility to negotiate the terms of the camouflage with the city engineer.~~

I.G. The city engineer may develop and institute a standardized cross-section location protocol for new or reconstructed rights of way.

~~J. Unless exigent circumstances exist, no new facilities may be installed that disturb the roadway hard surface or subsurface/subbase within three years of the construction or reconstruction of the roadway.~~

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12.20.110 Relocation of facilities.

The owner or operator of a facility on or within the public rights of way shall, at its own expense, upon written notice from the city reasonably in advance, promptly relocate any facility located on or within the public rights of way as the city may deem necessary or appropriate to facilitate the realignment ~~(for public safety reasons)~~, reconstruction, improvement or repair of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort; provided, however, that an operator may be permitted to abandon any property in place with the written consent of the city. This subsection does not apply to relocations covered by 12.20.100(F).

~~12.20.120~~ 12.20.120 Restoration.

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A. Unless governed contractually between the owner or operator and its customer, if an owner or operator of a facility disturbs a pavement, sidewalk, driveway or other surfacing, or landscaping, or other structure, either on private property or in public rights of way, the owner or operator shall, in a manner approved by the city engineer, replace and restore all pavement, sidewalk, driveway or other surfacing, or landscaping disturbed, in substantially the same condition and in a good, workmanlike, timely manner, in accordance with any standards for such work set by the city. Such restoration shall be undertaken within no more than ten (10) days after the damage is incurred, weather permitting, and shall be completed as soon as reasonably possible thereafter. The owner or operator shall guarantee and maintain restoration of a public improvement for at least one year against defective materials or workmanship.

B. ~~In the event an owner or operator of a facility fails to complete any work required for the protection or restoration of the public rights of way, or any other work required by city law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done, and the owner or operator of a facility shall reimburse the city the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the city may recover such costs through the security fund provided by an owner or operator of a facility, pursuant to the procedures for recovery from the security fund specified in the owner's or operator's franchise agreement.~~

Comment [KR1]: Lets discuss further.

C. Any and all public rights of way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation,

maintenance, or reconstruction of a system shall be promptly repaired by the owner or operator of a facility.

| 12.20.130 Excavation-ROW Work permitsPermits.

- A. Unless otherwise provided by law, franchise, city authorization or emergency circumstances, no person shall install, erect, hang, lay, excavate, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right of way in the city, or enter into the public rights of way to work on a facility, without first obtaining an excavation permit therefor from the city. Notwithstanding the foregoing, under no provision in this chapter shall any excavation permit or other approval from the city be required to install, construct, repair, maintain or replace any service drop.
- B. Denial. The city engineer may deny an excavation permit for failure to meet the requirements of this chapter, failure to meet monetary obligations to the city or it is necessary to protect the health, safety and welfare or the right of way and its current use. Failure to meet the requirements includes, but is not limited to, striking or damaging another facility within the right of way.
- C. Large Capital Programs. The city engineer may develop and institute a special streamlined permit and inspection process for large capital programs by mutual agreement with the applicant or applicants in the case of a joint project after receiving authorizing from the city manager.
- D. The city engineer may issue a stop work order to anyone failing to secure the proper permit or for not following the ordinances or city standards.

12.20.140 Business license.

A franchise under this chapter does not render unnecessary or take the place of any generally applicable business license that may be required by the city for the privilege of transacting and carrying on a business within the city generally.

12.20.150 Reimbursement of costs.

All grantees or permittees will reimburse the city for its internal and out of pocket costs, including, but not limited to, attorney and consultant fees actually and reasonably incurred by the city in connection with an application for an initial franchise or permit under this chapter as determined by the city after it takes action on the application. Any application fee submitted with the application will be credited against this amount. The applicant will remit to the city payment for such costs within thirty (30) days of its receipt of the city's invoice.

12.20.160 Administration and permitting to use space within the right of way.

The city engineer shall oversee the following administrative functions:

- A. Collect any applicable fees from all owners or operators of facilities using public rights

of way in the city;

- B. After approval by separate ordinance-resolution of the applicability, amount and formula for a right of way occupancy fee, publish from time to time a schedule of applicable fees hereunder;
- C. Be responsible for the continuing enforcement of all terms and conditions of city-granted franchises as such pertains to the occupation of public right of ways.

The city engineer shall oversee permitting as follows:

- A. No person shall occupy or use public right-of-way for private purposes or the purpose of providing utility, communication, information or data services to customers without first obtaining a franchise or excavation permit from the city.
- B. The city shall not grant, issue, or enter into any franchise or occupation easement that grants or allows exclusive use or occupancy of the right-of-way. Any person seeking a franchise or excavation permit for use of city right-of-way shall make application for a franchise or excavation permit as provided in this chapter.
- C. An application for a franchise or excavation permit for an occupancy easement or use of a right-of-way shall be filed with the city engineer on a form developed and provided by the city engineer.

Authority to issue permit; form of permit and term.

- A. Permits required by this chapter shall be issued by the city engineer. The city engineer shall review each application and shall issue each permit which he or she determines to be in compliance with the requirements of this chapter and any other applicable local, state, or federal requirements. In issuing a permit, the city engineer may require a change in the proposed location of the permittee's equipment where necessary to avoid interference with other equipment placed within the public right-of-way.
- B. Permits issued pursuant to this chapter shall be in writing and shall be executed by the permittee. The form of permits to be issued pursuant to this division shall be uniform, but shall be subject to periodic review and modification. When available, the city engineer may implement an electronic or digital permit system.
- C. Limit on term of franchises; limit on initial or renewal term of permits.
 - (1) No franchise for use of the public right-of-way shall be granted for a term in excess of 10 years.
 - (2) No permit issued for use of the public right-of-way granted by the city engineer shall be issued or renewed for a term in excess of 10 years.
- D. Existing Facilities. Any facilities Non-franchisee facilities emplaced and existing on or before November 1, 2017 and mapped are exempt prior to the adoption of this Ordinance located within a previously granted easement are from exempt from the

issuance of a permit.

Comment [KR2]: Discuss further.

E. Application for initial issuance of a permit; registration required.

A person desiring to obtain a permit allowing right of way occupancy as required in this code shall make application for a permit for such use and occupancy as provided in this chapter, and shall pay an application fee for initial issuance of the permit. The application fee for initial issuance of a permit and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution such fee shall be based upon the administrative costs of processing the permit. The application for initial issuance of a permit shall be filed with the city engineer not less than 60 days prior to the proposed effective date of the permit and shall be filed upon a form provided by the city for that purpose. The application shall include, at a minimum, the following information:

- (1) The name, address and telephone number of the applicant.
- (2) The name, address and telephone number of a responsible person whom the city may notify or contact at any time or in case of emergency concerning the equipment or utility system.
- (3) A statement of the purpose for the equipment or system proposed for installation in the public right-of-way, the type of service it will provide, and the intended customers\person which it will serve.
- (4) Any additional information which the city engineer in his or her discretion may require.

F. Issuance and renewal of permits; permit revocation and cancellation.

Prior to the initial issuance of a permit for use or occupancy of public right-of-way, the city engineer shall conduct a review of the permittee's background to determine the permittee's ability to meet the requirements as stated in this code. If on the basis of such review the city engineer determines that it would not be appropriate to issue the permit, the city engineer shall give notice of intent not to issue the permit as provided herein.

To obtain renewal of a permit, the permittee shall file a renewal application with the city engineer on the form provided by the city and pay an application fee for renewal of the permit. The renewal application fee and any future changes thereto shall be effective upon its inclusion in a schedule of fees adopted by the city commission by resolution. The renewal application shall be filed with the city engineer not less than 180 days prior to the expiration of the initial or any renewal term of the permit. Upon receipt of the renewal application, the city engineer shall conduct a review of the permittee and the permittee's prior use of the public right-of-way to determine the permittee's continued compliance with the requirements as stated herein. If on the basis of such review the city engineer determines that the permittee and the permittee's prior use of the public right-of-way complies with all requirements, the city engineer may renew the permit for an additional term of up to 10 years.

If on the basis of such review the city engineer determines that the permittee and the permittee's use of public right-of-way do not comply with one or more of the requirements as herein stated, the city engineer shall give notice of intent not to renew the permit. If a permittee holds multiple permits for use or occupancy of various rights-of-way within the city for the same or similar purpose, the permittee shall be required to renew all such permits under a single permit at such time as the earliest issued permit expires.

In determining the length of the term of an initial or a renewal permit, the city engineer shall take into consideration the likelihood that the city will require the use of the specific portion of the subject right-of-way for municipal purposes or that such use of the subject right-of-way will unduly burden the city or the public in its use of the subject right-of-way during the proposed term of the permit and the life cycle of the facilities to be deployed. A permit shall not be issued or renewed if the city engineer determines that any of the following conditions exist in the right-of-way proposed for permitting:

- (1) There is insufficient space in the right-of-way to accommodate the proposed use, given the other existing uses thereof;
- (2) The proposed private utility service connection would interfere with or conflict with existing or planned city equipment or utility equipment located or to be located in the right-of-way;
- (3) Such use is incompatible with adjacent public or private uses of that right-of-way;
- (4) Such use would involve an unacceptably high frequency of repair or maintenance to the private utility service equipment thereby requiring excessive excavation in or obstruction of the right-of-way; or
- (5) The construction or installation of such private utility service equipment would interfere with a public improvement undertaken or to be undertaken by the city or with an economic development project in which the city has an interest or investment.

If during the term of any permit the city engineer determines that the permit should be revoked due to the permittee's failure to comply with any of the requirements herein stated, the city engineer shall give notice of intent to revoke such permit.

G. The following shall constitute grounds for refusal to issue or renew a permit, or for revocation of a permit for use or occupancy of public right-of-way:

- (1) The permittee's failure to observe or comply with any of the following:
- (2) The permittee's use or prior use of public right-of-way has been conducted in full

and timely compliance with all laws and regulations applicable thereto, and the permittee has complied fully and in a timely manner with the requirements of any previously issued permit, and with the orders or instructions of city officials issued pursuant to this chapter; or

- (3) The permittee is current in the payment of permit fees, if applicable, and the permittee has made such payments fully and when due.
- (4) The permittee's commission of any of the following acts:
 - (a) The permittee has made a misleading statement or a material misrepresentation in connection with an application for initial issuance or renewal of a permit, in connection with its registration of its use of the public right-of-way or in connection with its use of public right-of-way; or
 - (b) The permittee has transferred its equipment, its business, or its permit to another person or has made a change in use of its equipment, without giving the city notice thereof and obtaining city consent thereto; or
 - (c) Striking or damaging another facility within the right of way.
 - (d) The subject right of way is highly congested and a reasonable likelihood exists in the city engineer's opinion that the space is needed in the future for a different service to a broader segment of the population.

The city engineer shall give notice of intent to cancel such permit if during the term of any permit the city engineer determines that:

- (1) The permittee's continued use of the public right-of-way will unduly burden the city or the public in its use of that property;
- (2) The public right-of-way for which the permit was issued will be required for municipal purposes during the term of the permit;
- (3) The permittee's equipment at a particular location will interfere with:
 - (a) A present or future city use of the right-of-way;
 - (b) A public improvement undertaken or to be undertaken by the city;
 - (c) An economic development project in which the city has an interest or investment;
or
 - (d) The public's safety or convenience in using the right-of-way for ordinary travel; or

(e) The public health, safety and welfare requires it.

Notice of intent not to renew a permit for use of the public right-of-way shall be given to the permittee, either by certified mail, return receipt requested, or by actual service or delivery thereof, which notice shall be given not more than 90 days after submission of the renewal application. Notice of intent to revoke or cancel a permit shall also be given to the permittee in the manner provided above. The notice shall set forth the grounds for refusal to issue or renew or for revocation or cancellation and shall inform the applicant or permittee of the right to an appeal hearing upon request. Such request for hearing shall be filed in writing with the Planning Department, and the hearing shall be scheduled and held by the Planning Board at their next regularly scheduled public meeting. At the hearing, the applicant or permittee shall have the burden of establishing that the grounds asserted in the notice do not exist. Upon the effective date of revocation or cancellation as provided in the city engineer's notice thereof, or upon the effective date specified in the city engineer's written decision upon the permittee's appeal, the permittee shall be required to cease its use and occupancy of the right-of-way or to remove or relocate its equipment therefrom, as provided in the notice or decision. Equipment not removed or relocated from the right-of-way as required in such notice or order shall be considered a nuisance and may be removed, relocated, or taken possession of by the city, at the permittee's expense. Except in emergency circumstances, the requirement to relocate, remove, or cease use of equipment shall be suspended during the pendency of any appeal taken by a permittee.

If a permit is refused or cancelled upon the basis that the subject city property is or will be required for municipal purposes, the applicant or permittee shall not be entitled to an appeal. However, in that event, the permittee shall be entitled to a partial refund of the annual fee already paid, such refund to be computed on the basis of $1/12$ of the required annual fee multiplied by the number of unexpired whole months of the year remaining in the permit term. In all other cases where a permit is not issued or renewed or is revoked, no refund of any portion of the required annual fee shall be paid to the permittee.

Notwithstanding the notice and hearing requirements above, the city engineer may, in emergency circumstances, order the immediate relocation or removal of equipment from the right-of-way.

Regardless of any other provision, a refusal, cancellation or revocation may be appealed under the applicable processes specified in state or federal law.

Failure to secure, renew or comply. Any person who fails to secure or renew a franchise or permit required under this chapter or any franchisee or permittee who fails to comply with the requirements of the respective franchise or permit, or this chapter, or with any other applicable legal requirements shall, upon notification of such violation by the city engineer, immediately act either to abate the violation or to cease its use and occupancy of the right-of-way and remove its equipment or system from the right-of-way.

- H. Transfer of franchise, permit, lease, business, or equipment without city's consent; change in use of equipment without city's consent.

A permit issued pursuant to this chapter shall not be transferred to any other person without the prior written notice to the city engineer. A permittee shall not transfer the permit, the business, or the equipment in the right-of-way to another person without giving the city engineer 90 days' prior written notice of such proposed transfer. In such notice, the permittee shall clearly identify the proposed transferee, giving the name and address of a representative of the transferee who is authorized to discuss and provide information to the city regarding the transfer.

A franchisee or permittee shall not change the use of its equipment without giving the city 90 days' prior written notice of such proposed change in use. In such notice, the franchisee or permittee shall clearly and completely set forth the proposed change in use of equipment, how it would be accomplished, including any excavations required to accomplish such change, and projections as to the future maintenance implications of such change in use. Any proposed change in use of a franchisee's franchisee's or permittee's equipment shall require the prior approval of the city engineer. Such approval may be withheld if the city engineer determines that the proposed use of the equipment at that location would be incompatible with or would likely damage or endanger other uses of the right-of-way, would involve a higher level of maintenance activities than the present use, would involve more street excavation or greater traffic disruption than the present use, or would be otherwise inappropriate.

- I. Amendment to permit.

If a permittee with a current permit issued pursuant to this division proposes to expand, reduce, relocate or modify any portion of its equipment or system within public right-of-way, the permittee shall file an application for an amendment to the current permit with the city engineer, shall pay the administrative application fee, and shall further comply with all other applicable requirements of this chapter. An application for an amendment to a current permit shall include relevant new information of the type required in connection with the initial application for a permit. If approved, the amended permit shall be issued by the city engineer in the same manner as the original permit. However, if the amendment involves only one or more new hook-on connections to the permitted utility system and if the new connections will be made entirely through the permittee's existing underground utility conduit or ducts so as not to require any excavation in the public right-of-way or by means of overhead wires or cables between existing utility poles, the permittee shall not be required to pay an additional administrative fee as part of the application for amendment.

- J. Duties of permittee.

The permittee shall be responsible for repairing or reimbursing other permitted or franchised utilities or other persons or entities lawfully using the right-of-way for any damage to their property caused by negligence of the permittee or its agents, employees or contractors in connection with the installation, construction, reconstruction, repair, operation, disconnection or removal of the permittee's equipment or system.

12.20.170 Reserved.

12.20.180 Reports and records.

Upon request, the city shall have the right to inspect and analyze at any time during normal business hours at the nearest office of an owner or operator of facilities, or, if such office is not in the city, then at such other location in the city as the city may reasonably designate, all books, receipts, maps, records, codes, programs, and disks or other storage media and other like material reasonably appropriate in order to monitor compliance with the terms of this chapter or applicable law. This includes not only the books and records directly relevant to enforcement of this chapter or the owner's or operator's franchise agreement that are held by the operator, but any books and records held by an affiliate, or any contractor, subcontractor or any person holding any form of management contract for the facilities in the public rights of way to the extent such books or records relate to the facilities. An owner or operator is responsible for collecting the information and producing it at a location as specified above. The city shall provide the owner or operator with advance notice stating the types of records sought to be reviewed and the reason for such review.

Contacts and maps: Unless this requirement is waived in whole or in part in writing by the city each owner or operator of facilities in the public rights of way shall maintain and produce or allow access upon request the following items:

An organizational chart with contact information for the portion of the organization most relevant to its operations within the right of way.

Detailed, updated maps depicting the location of all facilities located in public rights of way in the city.

Construction Updates: Unless this requirement is waived in whole or in part by the city, the owner or operator of facilities in the public rights of way shall deliver or make available upon request the following updates to the city:

Monthly construction reports to the city for any major construction undertaken in the public rights of way until such construction is complete. The owner or operator must submit updated as built system design maps to the city, or make them available for inspection, with notice of their availability, within thirty (30) days of the completion of system construction in any geographic area. These maps shall be developed on the basis of post-construction inspection by the owner or operator and construction personnel. Any departures from design must be indicated on the as built maps.

Reserved.

Records Required: An owner or operator of facilities in the public rights of way shall at all times maintain:

A full and complete set of plans, records, and "as built" maps showing the exact location of all

equipment installed or in use in the city, exclusive of customer service drops.

A file showing its plan and timetable for future major construction of the facilities.

Remote Site Visit: If any requested records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then an owner or operator of facilities in the public rights of way may request that the inspection take place at some other location; provided, that the owner or operator must pay reasonable travel expenses incurred by the city in inspecting those documents or having those documents inspected by its designee, as charges incidental to the enforcing of the owner's or operator's franchise or other authorization for use of the public rights of way.

12.20.190 Bond or letter of credit.

No person shall install, erect, hang, lay, bury, draw, emplace, construct, reconstruct, maintain, or operate any facility upon, across, beneath, or over any public right of way in the city or other city property until the owner or operator shall have filed with the city administrator a bond and/or letter of credit, in a form acceptable to the city, running in favor of the city, to guarantee the obligations of the owner or operator under this chapter and applicable law. The amount of the bond or letter of credit shall be no less than the reasonable cost of removal of the facilities and restoration of any affected public rights of way or other property pursuant to this chapter.

12.20.200 Insurance.

An owner or operator shall maintain insurance covering its facilities and operations in the public rights of way, as specified in a specific provision of this chapter or in its franchise agreement. Upon request, proof of such insurance shall be submitted to the city engineer prior to beginning any said work.

12.20.210 Enforcement.

Penalties: For violation of provisions of this chapter the city may seek fines in the amounts of \$100 for a first offense within a year, \$200 for a second offense within a year, and \$300 for a third or subsequent offense within a year. The penalties shall be assessable against an owner or operator and shall be chargeable to its performance bond and/or letter of credit, at the city's discretion.

Injunctive Relief: In addition to any other remedies hereunder, the city may seek an injunction to mitigate or terminate a violation, or employ any other remedy available at law or equity, including, but not limited to, imposition of penalties pursuant to subsection A of this section.

Timely Performance Or Compliance: Any failure of the city to insist on timely performance or compliance by any person shall not constitute a waiver of the city's right to later insist on timely performance or compliance by that person or any other person.

Termination On Account Of Certain Assignments Or Appointments:

To the extent not prohibited by the United States bankruptcy code, a franchise under this chapter shall terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee (including a debtor in possession in a reorganization) to take over the business of the owner or operator, whether in bankruptcy or under a state law proceeding; provided, however, that such franchise shall not so terminate if, within that one hundred twenty (120) day period:

Such assignment, receivership or trusteeship has been vacated; or

Such assignee, receiver, or trustee has cured any defaults and has fully complied with the terms and conditions of this chapter and any applicable agreement and has executed an agreement, approved by any court having jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this chapter and any applicable agreement.

In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of an owner or operator of facilities in the public rights of way, its franchise under this chapter shall automatically terminate thirty (30) calendar days after such foreclosure or sale, unless:

The city has approved a transfer to the successful bidder; and

The successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions binding its predecessor. Any mortgage, pledge or lease of facilities in the public rights of way shall be subject and subordinate to the rights of the city under this chapter any applicable agreement, and other applicable law.

If a franchise under this chapter is terminated for any reason, the city may, at its discretion, require the grantee or permittee to remove its facilities from the public rights of way and to restore the public rights of way to their prior condition at the owner's or operator's expense, or that of their sureties. If an owner or operator whose franchise has been terminated fails, after reasonable notice from the city, to remove its facilities from the public rights of way, such facilities shall be deemed abandoned and ownership forfeited to the city.

Remedies Cumulative: All remedies specified in this chapter are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve an operator of its obligations to comply with this chapter. In exercising any remedy specified in this chapter, including articles A and 8, the city shall comply with any substantive and procedural requirements for exercising such remedies in an owner's or operator's franchise agreement or other authorization.

Reduce or Waive Penalties: The city engineer or attorney may reduce or waive any of the above listed penalties for good cause shown.

12.30.220 Indemnification.

Any indemnity provided shall include, but not be limited to, the city's reasonable attorney fees

incurred in defending against any such claim, suit, or proceeding. Recovery by the city of any amounts under insurance, the performance bond or letter of credit, or otherwise shall not limit in any way a person's duty to indemnify the city, nor shall such recovery relieve a person of its obligations pursuant to a franchise or in any respect prevent the city from exercising any other right or remedy it may have.

12.20.230 Severability.

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the city and shall thereafter be binding on owners and operators.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

March 20, 2018
Planning Board Regular Meeting

8) DISCUSSION ITEM

B) Review & discuss the proposed amendment to MC 5.04 & 5.20 as recommended for approval of the City Commission by the City of Hobbs Planning Board at the December 15, 2015 regular meeting.



CITY OF HOBBS

COMMISSION STAFF SUMMARY FORM

MEETING DATE: March 21, 2016

SUBJECT: PUBLICATION OF AN ORDINANCE TO AMEND CHAPTER 5.04 AND CHAPTER 5.20 OF THE CITY OF HOBBS MUNICIPAL CODE IN THEIR ENTIRETY.

DEPT. OF ORIGIN: Planning Division
DATE SUBMITTED: March 14, 2016
SUBMITTED BY: Kevin Robinson – Planning Department

Summary: The City of Hobbs Planning Board has been reviewing the implementation of policy, procedures and regulations in regard to the Mobile Vending Industry since May of 2016. Currently there are municipal codes in place governing the permitting of these types of businesses but upon review the Planning Board determined that additional regulations were required to protect the health and safety of the public. A proposed Ordinance was approved by the City of Hobbs Planning Board on June 16, 2015 and presented to the Commission as a discussion item on July 6, 2015. The Commission requested additional public meetings to be held regarding this issue. An additional 8 public meetings were held on this issue including special meetings held after 5:00 p.m. to allow for public input from Mobile Vendors. While a more comprehensive Ordinance was originally proposed offering specificity on location and basic operation of a Mobile Vendor business, the Planning Board ultimately determined that a more concise alternative would be to amend our current municipal code to better reflect the community's desires. The addition of 2 paragraphs within MC Chapter 5.04 (Business Registration Ordinance) and 2 paragraphs within MC Chapter 5.20 (Temporary Vendors) offers the most basic guidance to Mobile Vendors as to locations. The attached Amendment to MC Chapter 5.04 & 5.20 was recommended for adoption by the City of Hobbs Planning Board at the regular meeting held on December 15, 2015 by a vote of 6 to 0, and was also a discussion item on the March 15, 2016 regular meeting.

Fiscal Impact:

Reviewed By: _____
Finance Department

No Fiscal impact.

Attachments: Ordinance and Planning Board minutes.

Legal Review:

Approved As To Form: _____
City Attorney

Recommendation:

Staff recommends consideration of the Publication of the Ordinance Amending Chapter 5.04 and Chapter 5.20 of the Municipal Code in their entirety.

Approved For Submittal By:


Department Director

City Manager

**CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN**

Resolution No. _____	Continued To: _____
Ordinance No. _____	Referred To: _____
Approved _____	Denied _____
Other _____	File No. _____

CITY OF HOBBS

ORDINANCE NO. _____.

AN ORDINANCE TO AMEND CHAPTER 5.04 AND CHAPTER 5.20 OF THE HOBBS MUNICIPAL CODE IN THEIR ENTIRETY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the following Chapters of the Hobbs Municipal Code be and is hereby amended in their entirety.

Chapter 5.04 - BUSINESS REGISTRATION

FOOTNOTE(S):

--- (1) ---

Note—Prior history: Prior code §§ 14-11—14-19, 21—21.1 and Ord. 899.

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.

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"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 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 – Locations of mobile business activity units.

Mobile business activity units shall be permitted on private property only in areas where 75% of the parcels within a three hundred (300) foot radius of the proposed mobile business unit location have been developed as commercial usage or are unoccupied. Mobile business activity units, excluding ice cream\snow cone trucks and\or pushcarts, are prohibited in primarily residential areas. Connection to Municipal or Franchisee utilities negates the mobile status of the unit and subjects the site and any structure attached thereto to be in full compliance with all commercial development rules, regulations and permitting requirements.

5.04.060 - 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)

5.04.070 - 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)

5.04.080 - 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)

5.04.090 - 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)

5.04.100 - 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)

5.04.110 - 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)

5.04.120 - 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)

5.04.130 - 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 5.20 - 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:

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"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.

5.20.090 – Locations of mobile business activity units.

Mobile business activity units shall be permitted on private property only in areas where 75% of the parcels within a three hundred (300) foot radius of the proposed mobile business unit location have been developed as commercial usage or are unoccupied. Mobile business activity units, excluding ice cream\snow cone trucks and/or pushcarts, are prohibited in primarily residential areas. Connection to Municipal or Franchisee utilities negates the mobile status of the unit and subjects the site and any structure attached thereto to be in full compliance with all commercial development rules, regulations and permitting requirements.

(Ord. 931 (part), 2004)

5.20.100 - 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)

5.20.111 - 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)

5.20.112 - 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)

PASSED, ADOPTED AND APPROVED this__ day of _____, 2016

SAM D. COBB, Mayor

ATTEST:

JAN FLETCHER, City Clerk

Proposed Mobile Vendor Ordinance History

May 19, 2015 - Planning Board Discussion Item.

Minutes

Mr. Robinson said this item involves several different departments. He said this is a new ordinance that is being proposed and this is a draft ordinance. He said the City Clerk's Office will be responsible for implementation of this ordinance. He said if you have a vacant lot next door to you as per our existing ordinances and a mobile vendor wanted to sell tacos they would be able to do that currently unless they have restrictive covenants that would not allow this. Mr. Robinson said the City of Hobbs will now be requiring written permission or leases to get a permit. He said they will also have to stay off the public right-of-ways.

Ms. Jan Fletcher, City Clerk said there are more and more food vendors around and not all of them are food vendors but sell other items as well. She said the people leasing land to these vendors also have a responsibility to make a safe place for patrons. She said there is no handicap accessibility and is just not safe for citizens.

June 16, 2015 – Planning Board Consideration Item.

Minutes

Mr. Hicks asked if 30 days was needed to get a permit. Mr. Robinson said it never takes that long but it does give staff time to get all the information they are requesting. Mr. Hicks thought it should be 21 days. The Board agreed. Mr. Hicks did not think side walk sales should be limited to 3 per year. He said it did not seem appropriate for downtown merchants. Mr. Shaw said he didn't think it should even be limited to 3 a month. Mr. Robinson said sidewalk sales have never been addressed in the Municipal Code. The Board agreed sidewalk sales should be exempt but must maintain pedestrian access.

Mr. Robinson said it is the intent of the city to make sure Mobile Vendors are on a developed parcel with an impervious surface. He said when there is no rain in this area the grass becomes very dry and can cause a grass fire from the mufflers. He said as they enter and exit the site there are no driveways so they are eroding asphalt on city roadways. Mr. Hicks said there is an issue with traffic tearing up the road going to and from these sites.

Mr. Robinson said vending locations within the City of Hobbs Public Parks and Municipal properties will be approved by the Parks Department. He said staff does not want to limit vendors to a specific location. Mr. Hicks asked about hours of operation? Mr. Robinson said 7 am to 10 pm. Mr. Kesner asked why 7 am? After a brief discussion the Board agreed that hours of operation should be stricken because they will not be in a residential area.

Mr. Hicks said he thought that it should be changed from 500 feet away from a school to 100 feet to be consistent. Mr. Robinson said litter and trash removal will be the vendor's responsibility.

Ms. Pam Acevedo has mobile food vendor trailer and they are parked at their house on Acoma and she was wondering if they would be allowed to keep it there? Mr. Robinson said this will not go into effect until January 2016. Mr. Shaw said he felt like the owners should check their restrictive covenants for violations. Mr. Hicks said the Board would have to look into rather or not this location would work for a mobile vendor.

Mr. Robinson asked if there needed to be a variance clause for this ordinance? Mr. Hicks said he felt like there should be and notifications on variances and it should be the same as for mobile homes which is 300 feet. Mr. Kesner agreed.

Mr. Penick made a motion, seconded by Mr. Shaw to approve the Mobile Vendor Ordinance as amended. The vote on the motion was 5-0 and the motion carried.

July 6, 2015 – Commission Discussion Item.

Minutes

Proposed Ordinance Adopting Permitting Procedures and Development Regulations for the Mobile Vending Industry. Mr. Kevin Robinson, Development Coordinator, stated the Planning Board has been reviewing the policy, procedures and regulations in regard to the Mobile Vending Industry since May of this year. He stated currently there are municipal codes in place governing the permitting of these types of businesses but upon review, the Planning Board determined that additional regulations are required to protect the health and safety of the public. Mr. Robinson stated the two requirements that are being established for a single mobile unit is paving and access of a designated right-of-way. He further added that a new section regarding vending parks has been added. Mr. Robinson stated vending parks is a new trend and would require landscaping and buffering.

In reply to Mr. Robinson's question, Ms. Jan Fletcher, City Clerk, stated there were 26 mobile vendors registered in Hobbs in 2014 and currently there are 27 registered mobile vendors. She stated the Clerk's Office is seeing an increase of mobile vendors doing business in Hobbs.

In response to Commissioner Newman's question, Mayor Cobb stated that if there is anyone in the audience to address the mobile vendor license, they may speak.

Mr. Charlie Acevedo, owner of Acevedo's Burgers, stated he has concern regarding the proposed procedures and developmental regulations for the mobile vending.

Mayor Cobb stated the proposed procedures and developmental regulations for the mobile vending is for the purpose to regulate and not to run anyone out-of-town.

In reply to Commissioner Newman's inquiry, Ms. Fletcher stated the Clerk's Office does maintain addresses for all registered mobile vendors. It was the recommendation of Commissioners Mullins and Newman for the City to invite all registered mobile vendors to the Planning Board meeting to revisit the proposed ordinance.

Mayor Cobb stated that the City does not have zoning but subdivisions often have restricted covenants that can prohibit mobile vendors and business in its neighborhoods through a private process. He stated this proposed ordinance would assist homeowners in prohibiting mobile vendors in their neighborhood without having to hire an attorney. Mr. Robinson agreed and stated mobile vendors would be prohibited to set up in residential areas.

Ms. Barbara Whitson, previous snow cone vender, spoke against the proposed procedures and developmental regulations for the mobile vending and the creation of a mobile park.

Mayor Cobb stated the intent of the proposed procedures and developmental regulations for mobile vending is to set parameters on where they can and cannot sell.

July 21, 2015 – Planning Board Notification of Commission’s Direction.

Minutes

Mr. Robinson said that it has been requested by the City Commission for this Board to have another public meeting for the Mobile Vendor Ordinance. He said the Commission would like an evening meeting. The Board agreed the Regular Meeting date of August 18 at 5:00 pm would work for them.

August 18, 2015 - Planning Board Public Hearing.

Minutes

Mr. Robinson said he would like to clear up some inaccuracies. He said personally he doesn’t think there is another public body that is more interested in the effects of the ordinances they pass. He said that he believes we are a very business friendly community. He said this proposed mobile business will not run anyone out of town. He said mobile vendors are allowed to operate within the city limits. He said this ordinance will place minimal developmental standards for vendors. He said the city is not interested in being involved in a mobile vendor park. He said private property owners have the right to put in a mobile vendor park however, the municipality will not be the owners of a mobile vendor park.

Mr. Robinson said there were some additional suggestions about changes in the ordinance and that is the reason this item has come back to this Board.

Mr. Robinson said that Ice Cream and Snow Cone vendors are allowed within residential neighborhoods on minor residential streets. He said the most substantial change is on private property. He said a developed property for a single vendor shall have 50 feet of minimum frontage. He said they would like vehicles to be able to enter the site and park in front of the vendor and receive their products and exit the site without backing up. He said the concept is in the Major Thoroughfare Plan.

Mr. Robinson discussed the FAQ’s. He said this is a list of frequently asked questions developed by staff. He said the City of Hobbs encourages mobile vendors. He said all vendors are permitted through a regular business application. He said health and safety concerns are being addressed by the current code. He said the point of the proposed ordinance is to dwell more on the site and site safety. He said every vehicle that travels in our community is traveling on public roadways that we are paying for and maintaining. He said access to a business is granted through the public right-of-way. He said when a drive way that is installed that is insufficient to carry that type of traffic then you get slough off and debris dragged from the lot to the street which wears the street down. He said then the site negatively impacts the entire community.

Mr. Robinson said there are two different site development standards for a reason. He said a single vendor selling their product will not be as big of an impact as what a mobile vendor court would be. He said what staff is looking at in that situation would be good access from the street and good parking areas and flow areas around the unit.

Mr. Robinson said when you start talking about a mobile vendor court is a higher use and potentially higher densities. He said there should be a lot more usage of the sites. He said there are rules and regulations that are in place and that are required for all developments in Hobbs. He said if you have a mobile vendor park then you must build to higher standards.

Mr. Robinson said there is a question if single or multiple vendor sites can be located anywhere in Hobbs? He said the answer yes. He said the locations have to be within an area where 75% of the adjacent sites have been developed as commercial uses and are prohibited in primarily residential areas.

Mr. Robinson said the new regulations will not take effect until January of next year. Mr. Kesner asked what the surface is that is required for vendor locations? Mr. Robinson said asphalt or chip seal surface. Mr. Robinson said if a vendor had a caliche packed area with adequate drive ways and had a drive pad free from vegetation and no pot holes then he could see them getting a variance from the Board.

Mr. Shaw said this Board has discussed this ordinance several times and they really have tried to analyze how they are going to affect the vendors but they want to hear from the vendors on how it is going to affect you. Mr. Kesner asked about the ordinance and where it states "in public parking space or public parking lot" he is not sure if that is a defined term. He asked what the word "public" meant? Mr. Robinson said that is parking spaces that are like K-Mart parking lot for the use of the public. Mr. Kesner said if they have permission from the land owner then that might be too restrictive. Mr. Hicks said he thought public parking meant public thoroughfare or right-of-way. Mr. Robinson said correct. Mr. Kesner said it should state "publicly owned" as the public parking lot.

Mr. Hicks opened the public hearing at 5:53 pm.

Mr. Gregory Gonzales said he owns a food truck and Hobbs is not as big as Houston and California to have a food court. He said he is opposed to food courts. Mr. Hicks said the city is not making any food court parks but people will be allowed to develop a food court if they wish. He said you can select your food vendor site as long as it meets the requirements. Mr. Kesner said this will be a City of Hobbs Ordinance and will only be enacted inside the city limits.

Ms. Azevedo said by setting these ordinances in place you are essentially forcing them to go to a park. She said before they set up their trailer at their home they were in compliance. She said with the new rules they are not in compliance of approximately 9 of the items. She is unsure how they measure the 75% commercial. Mr. Robinson said 75% of the properties around your area will need to be commercial. Mr. Shaw asked if that will be a radius of 300 feet? Mr. Robinson said yes.

Mr. Kesner said the City of Hobbs does not enforce restrictive covenants. He said what can happen is they can get a variance and have their property considered commercial. He said it is a burden on the infrastructure in a residential area. She wants to know what is causing them to be a burden. She said it also states they cannot run hoses or cords to the mobile vending unit. She asked if they could clarify that. Mr. Robinson said the units should be self-contained. He said in a mobile vendor park you can run hoses but if you are on a single vendor site then each night you will have to dispose of your waste and resupply your water. Ms. Azevedo said they are wired directly to their home. Mr. Robinson said that is a problem. He said wiring the unit on to your house is using your house as a commercial property. Mr. Penick said you cannot be hooked up to utilities like that because it is against the city code. He said you have to have your own utilities with your own address. Mr. Robinson said they can use a generator but it has to be set so far back from the mobile vendor unit.

Ms. Acevedo asked about variances and if these issues could hinder her from getting a variance? Mr. Penick said it could. Mr. Kesner said it states in the ordinance the building setback line in the thoroughfare to allow patrons. He said it discusses building setbacks and states main building or garage must be 21 feet from property line.

Ms. Kami Randolph from Rattlers asked if all the mobile food vendors need to be parked on something that has cement, trees and flowers? She said mobile food vendors go to places that have dirt. She said dirt brings

money. She said when you start having to set up then you have to pay people and then they don't make as much. She said people want to come to the best to get the best and they will go on dirt or wherever the best is. Mr. Kesner said the concern is not to push concrete or an all paved surface but to make sure we are not damaging the right-of-way because it is not fair for the citizens at large to pay for the damage done to the roadway when clients are going to a business.

Mr. Shaw said they need to have a proper water hook up, proper sewer hookup and a proper electrical hookup. Mr. Robinson said correct and once they do all of that and get it inspected then it protects our community water source, sewage plant and electrical safety.

Mr. Garry Buie said he has watched this Board work on numerous occasions and change their minds when they have listened to the public but they cannot change their minds when no one speaks. He said give them the changes you want, give them the opportunity to work for you.

Mr. Mike Stone said he had a couple of suggestions. He said there are a couple of areas of concern. He said the City of Hobbs cannot enforce private covenants. But the vendors should know you can be sued by your neighbors. Mr. Hicks said the Board has always been very reluctant to approve anything that is in conflict with the restricted covenants. Mr. Stone said in C1A of the ordinance there needs to be more definition of "primarily residential areas". He said D1 of the ordinance needs to be changed to publicly owned. He said the final item is on page 9 paragraph E the statement "without exception is met" should read "finding that each of the following criteria is considered".

Mr. Sanderson asked Mr. Stone if the existing vendors might have an extra year to come in to compliance. Mr. Stone said that is much more palatable to everyone. Mr. Robinson said the issues that this board has heard so far have been variance request issues rather than site development issues. Mr. Robinson said the person who is applying for the permit has to have at least one site.

Mayor Sam Cobb thanked the Board on behalf of the Commission and himself personally. He said they do an outstanding job and he hopes the citizens have a respect for the amount of time and effort the staff and Board puts in on behalf of the community. He said we want to make sure we give people an opportunity to do business but there needs to be a balance on what we do in terms of making sure that we not change but help them maintain the character of their neighborhoods.

Mr. Marshall Newman said he has received calls from several of the food vendors and the request was to make the meeting at 5 pm because they were busy during the day. He said 30 letters were sent out to vendors and there has been 3 people speak today. He said he wished there had been more participation but thank you for your time.

Mr. David Soto said he is a vegetable food vendor. He asked if someone wants him to sale corn in a particular area can he use his generator? Mr. Robinson said the generator has to be within 6 feet of your unit and the cord has to be taped down. Mr. Kesner told him that he could not be in public right-of-ways to do that. Mr. Soto thanked the Board for listening to them.

Mr. Hicks asked if there were any further comments? There were none. Mr. Shaw made a motion, seconded by Mr. Drennan to close the public hearing at 6:47pm. The vote on the motion was 6-0 and the motion carried.

Mr. Hicks said he thought this ordinance should have one more edit to come before the Planning Board. Mr. Hicks suggested bringing this item back to the Board at the next Regular Meeting or get together for a Special Meeting. Mr. Kesner made a motion, seconded by Mr. Penick to table the proposed Mobile Vendor Ordinance. The vote on the motion was 6-0 and the motion carried.

August 27, 2015 – Planning Board Public Hearing.

Minutes

Mr. Kesner asked Mr. Robinson if he wanted to give a brief overview of the ordinance. Mr. Robinson said this is before the Board again because of the urgency to set the minimum site standards before January 1st of 2016. He said this will have to be adopted as an ordinance. Mr. Ramirez asked if there was someone with the city who could interpret the ordinance in Spanish? Mr. Robinson said it has not been published in Spanish but said the city could do that if requested.

Mr. Robinson said there is a frequently asked questions sheet. He asked if it would be better to convert that to Spanish or the entire ordinance? Mr. Ramirez said he thought the entire ordinance. Commissioner Newman asked how many mobile vendors were at the meeting and how many would need this ordinance in Spanish? Several members of the public raised their hand. Mr. Ramirez said he felt like they needed to read the ordinance before the meeting. Commissioner Newman said this is the second time they have showed up to the meeting and he said it is tough for them to understand what is going on and he wants them to have the best information they can.

Mr. Hicks arrived at the meeting.

Mr. Robinson said the reason it is back to this Board is because it needs to be presented in the September Commission Meeting to meet the 45 days to be published in October. Mr. Ramirez asked how long it would take to interpret the ordinance in to Spanish. Mr. Robinson said he thought it could be done in a weeks' time. Mr. Drennan asked if the city normally made all the ordinances in Spanish? Mr. Robinson said the Municipal Code is written in English but there is staff that assists with interpretation.

Mayor Sam Cobb said he thought this was an issue that probably needed to be tabled. He said from a discriminatory stand point he thinks this is a bigger question. He said if the city is going to embark on putting ordinances in languages then they need to be put in multiple languages. He said there are people in this community that are Korean, Indian, and American Indian. He said there are a lot of different nationalities in this community. He said to specify that our ordinances only be in Spanish is probably discriminatory. He said if that is going to create a situation where we cannot move this ordinance on then that will take a substantial amount of deliberation by the Commission and a lot of other public input before we start choosing a language to put our ordinances on.

Mayor Cobb said his preference would be to establish a policy so if someone wishes to come and speak to a public body and desire to speak a language other than the language our ordinance is currently in then we should allow them to bring their interpreter so the communication can be properly done. He said he personally has a problem with him speaking and having someone else that is not his friend or business associate interpreting for him. He thinks that could create problems as well. He thinks the appropriate policy would be if someone wishes to speak to the Commission or Planning Board in their native tongue then they bring an individual that is proficient in both English and their language. He said he really hesitates to endorse putting something in any particular language without putting it in multiple languages and that is a huge burden from a staff stand point and an interpretation stand point. Mr. Kesner agreed with that. Mr. Newman also agreed with the Mayor. Mr. Buie said unfortunately because of the laws they have to protect themselves and the

Mayor is right. He said he would love to see it in Spanish but it will take time and money to translate into Spanish or Korean or whatever the language may be.

Mr. Robinson said in staff's defense at the last Planning Board Meeting the opportunity was given to the participants to come in and talk to staff on a one on one basis and the municipality does have staff members who are interpreters. He said translating the frequently asked questions may be an easier option. Mr. Ramirez suggested interpreters and the vendors come up with their own frequently asked questions.

Mr. Mike Stone said this is an open public forum and he suggested if someone does not understand what is going on then are we really getting public input. Mr. Stone said this item is not a real time crunch. He said it takes 45 to 60 days to get an ordinance in place. He said he does not care to have a staff member put in the position of interpreting. He said his legal recommendation from the fly would be to table this item and determine from a policy level what due diligence needs to be done to provide a format that the majority of the vendors can understand.

Mr. Kesner said this is probably not an urgent issue but what Mr. Robinson said is that the city is currently not enforcing a lot of violations by vendors because they are waiting of the adoption of this ordinance. He said it may make sense to enforce the violations while they are waiting to adopt an ordinance. Mr. Robinson said the very heart and soul of this ordinance is the minimal developmental standards that would be associated with this type of use. He said as it sets right now there are no standards. Mr. Stone said the public that participates in these public forum meetings should have the ability to know what is going to be passed. He said he did not have a problem with people bringing their own interpreter but he does think notice is a big deal in this matter. Commissioner Newman said they have shown up at the last two meetings so that does mean they are concerned. He said this body has decided to have the meeting at 5:00 pm so it is convenient for the vendors.

Mr. Kesner said the vendors need to schedule a time to meet with staff or get a copy of the ordinance and then come back before the Board with their questions. MOP said most of the vendors feel like the city is trying to close them down. MOP asked if she could move to Eunice and run her business? Mr. Robinson said they could move their business to Eunice but the International Building Code would not allow them to have tables and chairs in front of a mobile vendor. He said once they have tables and chairs it makes them set up for outdoor dining for a restaurant which would be a violation of the IBC. He said if you do that you also must become handicap compliant. MOP asked if this ordinance just applied to Hobbs. Mr. Robinson said correct. Mr. Kesner said the City of Hobbs is in the process of getting an ordinance passed.

Mayor Sam Cobb said for this evening what we have done is learn that the City Commission needs to come together and in all fairness to those of you that serve on the Boards, they have an obligation to provide a policy. He said also they need to provide the citizens the rules so they will know. Mr. Cobb said they would provide each Board with a policy. He said if they table this item it will give the individuals in this room confidence that they can operate their business as long as they maintain the rules currently in place and then the Commission can come back with a broad policy for all Boards so when there are public hearings they will know what will be expected of them.

Mr. Kesner said because there are citizens who want to come before the Board so he does want to open this meeting to the public and allow them the opportunity for a few questions and answers. Mr. Kesner opened the public meeting at 5:50 pm.

Member of the public said she had a mobile license here in Hobbs. She wanted to know who was making the ordinance? Mr. Robinson said the Governing Authority makes the rules and regulations not staff. She wanted to know the reason for the ordinance and what problems have they had? Mr. Robinson said most of the rules and regulations are complaint driven. He said the primary complaint has been the location of where your unit

is sitting. She asked if it was just complaints and not about safety? Mr. Robinson said it is definitely about safety which is what everything is geared too. She said if there are two or more vendors in a place then you want to make it into a mobile vendor's park? Mr. Robinson said correct and there would be higher development standards and that is because of the higher density at that location. Commissioner Buie said this is not forcing them to do that though. He said you can stay at your same location if you want.

Mr. Kesner said if you were to park in an unsafe area and your unit caught on fire and then caught the neighbor's property on fire it would be a problem. She said there are a lot of safety issues and she knows safety is important but the city doesn't enforce it on all the places. She said she thought the ordinance only need to be in Spanish and English. Mr. Robinson said if they would come in and talk to staff they are the first link to the Board and Commission.

Ms. Estella Hernandez said her main concern is that when they applied for their vendor's license there were no regulations or ordinances given to them. She said at that time they could have do things differently. She said they have only been in business for nine days. Mr. Hicks said this is a new ordinance that they are contemplating. He said they are building the ordinance right now based on the comments at this meeting and research that the staff does. She said when she applied for the license they did not mention anything at that time about a new ordinance. Mr. Shaw said just because there is not a Mobile Vendors Ordinance in place at this time does not void the fact that there are other ordinances that regulate what you do. He said there may be several ordinances in place that are for safety or the IBC standards.

Mr. Greg Gonzales said that he thought having to pave where the vendors are parked is a little too much. He said there are 18 wheelers that bring caliche onto the roads and why don't you put something on them too. He said paving is not cheap. Mr. Kesner said as a tax payer you talk about the trucks and the city should not allow them to pull onto public roads and cause damage but that is not this Boards issue but a Code Enforcement issue. He said they are just trying to protect the assets that are owned by the city. Mr. Hicks said new development rules do require appropriate driveways but a lot of the yards have been there for a long time.

Ms. Jessica Garcia asked if the ordinance does pass what is the time limit that they will be notified of the changes. Mr. Hicks said that is why the Board is working four months early on this ordinance because after it is complete it will take 60 days to get the ordinance in place. Ms. Garcia asked if the ordinance does get passed when will the ordinance go in place? Mr. Stone said he thought all of the vendors that have a license will be notified.

Mr. Kesner asked the City Clerk, Ms. Jan Fletcher if all of the vendors would have notices sent out to them in advance for their business renewal? Ms. Fletcher said all of the mobile vendors are required to have a business registration. She said they will get a notification for their business registration as well as their mobile vendor's license. She said they will usually receive notification about the first of December for their renewals.

Commissioner Buie said first and foremost most of the people here are under the assumption that this has become law or an ordinance but it has not yet. He said get back to work. He said that is what this meeting is for is to get the opinion from the vendors. He said this ordinance is not devised to hurt you. He said go to the city and talk to the staff and tell them what you need to make your business work. He said if it passes this Board you all have a City Commissioner that lives near you or in your district so just call and let them know how your feel. He said each of you is our boss. Mr. Buie said that he thought the concrete would be too much. He said maybe a hard surface would work.

MOP interpreted for his dad Mr. Sipirano Urquid and he said his mobile food truck is called Montano Burritos and he has been successful and would like to keep working. He said most of them start at the bottom and work up. He said it is not fair to remove all the food trucks because it helps the city from taxes. He said he

would eventually like to open a restaurant. He said if they take away the food trucks how are they supposed to support their family. He said they work very hard. Mr. Kesner said that he appreciates their hard work and they want them to be successful. But they also want to make sure what you do does not injure or harm anyone or anything that is owned by the city.

Mr. Hicks said their goal is not to remove the food trucks but make it safe and protect the public.

MOP translating for Ms. Pena said they have a mobile food truck. She is asking why they are making rules that make it harder for them to stay in business. She said they are open very early before the restaurants. She said a lot of their customers can't go to restaurants because they cannot get their trucks in and out of their parking lots. She thinks the complaints come from the local restaurants because they are taking away their business. She also asked that they not make them put pavement at their locations because that is a lot of money.

Mr. Kesner asked what the city did about complaints? Mr. Robinson said once the city receives a complaint it is directed to the department that will handle the complaint. He said most of the time they are Code Enforcement complaints. He said they will send personnel out to the location and see if the complaint is valid. He said there are some complaints the city cannot resolve such as property owner to property owner.

Ms. Veronica Molina is translating for her husband. He said they were here at the last meeting and there were other points that were mentioned such as the sewer, electricity and the location. He said they also cannot be in a residential area that they have to be in a commercial area. He said if they are hooked on the sewer at the house then what difference does it make if it is them or Applebee's that is hooked onto the sewer? Mr. Kesner said for a commercial restaurant versus a residence there are different steps you would have to take. Mr. Robinson said it is a different connection. He said ultimately everything the restaurant and the residential does is the responsibility of the city. He said it flows to our Waste Water Treatment Plant and your tax dollars pay for that. He said if there are not separators for a restaurant and it starts becoming more expensive to treat the waste that entered into the point of origin illegally then that becomes a problem. Mr. Kesner said if the separators are not in place it could cause sewer to back up and cause problems for your neighbors.

Ms. Molina also said he wanted to know about electricity. He said they use their house electricity but they pay for it. Mr. Kesner said the issue there is it has to meet the electrical codes. He said if you are running an extension cord it becomes a fire hazard.

Ms. Maria Soto said the oilfield is down right now and she works at the food truck to try and help her husband pay the bills. She wants to know why there are so many rules. She said it is hard for a Spanish person that does not speak English to find a job. She said the restaurant owners are wealthy and they don't have to worry about money. Mr. Kesner said that is not a true reflection for every restaurant. She said there are people working for food trucks that don't have papers and how will they get a job if they don't have that. Mr. Kesner said if that food truck is hiring an employee and they are a business then they have to abide by the same laws that the restaurant does. He said if they are hiring an illegal employee they are violating the law. He said you have to obey by the City Ordinances, State and Federal laws.

Mr. Kesner said he feels like everyone has discussed the fact that everyone is concerned by the ordinance and shutting them down. He asked if they had another topic beside that they would like to hear that.

Ms. Jackie O'Campo said they all think you want to shut them down. She said the big problem is the translation and they have a hard time understanding. She knows there are a lot of safety issues. She said it is just a lot of misunderstanding. She would like the facts and ordinance in Spanish. Mr. Kesner said all the other ordinances are in English. Ms. O'Campo said it would be good if they got together with questions for the Board.

Mr. Kesner said that he thought staff could create dual language informational brochures. He said not the ordinance but some of their questions we can get translated.

Mr. Kesner said the City Clerk's Office will try and get the questions translated and you can contact them and get a copy of the proposed ordinance.

Mr. Hicks asked if it would be feasible to have their permits extended until February is needed? Ms. Jan Fletcher said yes assuming that the City Commission would have no objection to that but it would work for the Clerk's Office.

Mr. Kesner closed the public meeting at 7:24 pm.

Mr. Hicks made a motion, seconded by Mr. Ramirez to table the Mobile Vendor Ordinance. The vote on the motion was 6-0 and the motion carried.

September 15, 2015 – Planning Board Discussion Item.

Minutes

Mr. Robinson said the reason this is a discussion item only is because this item has already been recommended to the City Commission. He said since that there have been two additional meetings in the evening to get the mobile vendors involved. He said one of the things that came out of the last meeting was the desire to have the frequently asked questions translated from English to Spanish. He said the Board needs to set a time for another meeting to complete this ordinance and get it sent to the City Commission. He said at the last meeting it was also conveyed that the Board is not under as much time constraints as first thought.

Mr. Hicks asked if there have been any mobile vendors come in to get clarification on the issues since the last meeting? Mr. Robinson said at the last three public meetings individual meetings for clarification have been offered to the mobile vendors. He said since then one party has come in and requested the ordinance and frequently asked questions. Mr. Robinson said the frequently asked questions have not been approved yet. Mr. Hicks said that he thinks the Board should get the frequently asked questions approved. Mr. Hicks asked about number 10 in the FAQ and if this ordinance will be in effect January 1, 2016? Mr. Robinson said it could be done. Mr. Kesner said it might be better to have a 90 day grandfather clause. He said this ordinance may not get approved until February 2016. Mr. Kesner suggested to state 90 days after the approval date.

Mr. Shaw asked how many mobile vendors were already in compliance? Mr. Robinson said he felt like the majority of the vendors were compliant.

Mayor Sam Cobb said that he thinks they need to keep continuity in the business registration side of it. He said everyone registers their business on January 1st. He said if they drafted a landscape ordinance then everyone is subjected to the landscape ordinance when the Commission implements it. He said he thought they ought to bifurcate the two issues. He said they should maintain the January 1st business registration and then based on the Planning Boards recommendation and the Commission's then the mobile vendor ordinance can be effective June 1st. He said he thought that would be the best way to make the proper transition. He said there are some things that need to be addressed. He said in all fairness to those who are in compliance they need to be sure the playing field is level for those who are not.

Mr. Sanderson said one of the frequently asked questions is always do we have to shut down? He said the answer is no and that should go on the frequently asked questions as number one. Mr. Robinson said the Board would like to change number one on the FAQ's and also number ten.

The Board also discussed the requirement for mobile vendors in a residential area versus commercial. Mr. Randall said they need to establish something for staff to look at administratively. He said if there was a situation where there were three houses next to an all commercial area then there would be a great potential for a variance. He said the purpose is to protect the residential uses. He said most complaints come from the residential uses not the commercial properties. He said a lot of the residential uses are situations where that individual person that owns a house is looking to city staff or the community to protect them. He said the purpose is to establish a standard. Commissioner Buie asked about Lovington Highway and if it was commercial with all the house behind the street on Northwest. Mr. Robinson said they would need to be behind the setbacks and an approved driveway access. Mayor Cobb said the underlying decision should be what is the impact to the character of the neighborhood. Mr. Hicks agreed. He said that language is in other ordinances so he thought it should be in the mobile vendor's ordinance.

Mr. Larry Sanderson said this is more a principal of public policy for reasonable protection of infrastructure while still accommodating businesses as best as you can. He said good public policy is good public policy. Here we are talking about protection of infrastructure and what is a reasonable protection of that and reasonably avoiding an additional burden on other tax payers.

Mr. Sanderson said he understands the sensitivity to the vendors. He said we are really talking about the property owner who has an undeveloped parcel that they are going to use and make money off the vendor. He said making an accommodation to a property owner to make a reasonable investment to protect public structure and not place an additional burden on the public. He said they wouldn't just let commercial property owners go do whatever they want to do. He said we are having this conversation in the contexts of the mobile vendors but it is really a property owner's conversation. He said they are as much or more invested in this as the mobile vendors are. He said he is not trying to put them out of business or make it difficult for them but they also can't write a blank check to a property owner who has an investment and obligations associated with the investment. He said this is really a property owner ordinance as well.

October 20, 2015 – Planning Board Final Review Item.

Minutes

Mr. Robinson this is the final review of the Mobile Vendor Ordinance. He said the next meeting all of the mobile vendors will be invited. He said the biggest issue that the Board has had has been the minimum site requirement. He said this Board has settled on 50 feet from the edge of the pavement to the setback line. He said he thought it was important to have consistency for the Code Enforcement Officers. Mr. Hicks said he thought the only issues the Board had was the hard surface requirement and the length.

Mr. Hicks asked if it was necessary to set the Mobile Vending Unit on the hard surface? After a brief discussion the Board agreed the site did not have to be a hard surface as long as it is behind the setback line. The Board agreed it should read "a property proposed for occupation by a single mobile vendor shall have 50 feet of minimum frontage adjacent to a dedicated thoroughfare, an all-weather asphalt, chip seal or concrete driveway at least 50' in length from the edge of pavement allowing ingress and egress to the occupied property."

Mr. Robinson said the Mobile Vending Unit must be self-contained. Mr. Ramirez asked if the word "Conveyance" could just be "Vendor Unit". He said it will be easier for interpretation purposes.

Mr. Hicks asked how they were going to measure locations and rather they were commercial or residential. Mr. Robinson said staff still believes they should do the 300 foot radius for the adjacent parcels. He said that he also thought the variance procedure needed to be more specific. He said he thought the 300 feet from the

center of the proposed location of the Vending Unit would be where the variance would be measured from. Mr. Hicks asked if they would count the 75% based on the number parcels? Mr. Robinson said correct.

Mr. Kesner thought on page 9, the first sentence “without exception” should be removed. Mr. Sanderson said maybe it should state “each of the criteria have been considered”. The Board agreed. Mr. Hicks asked if the Board if they were ready to recommend publishing this ordinance and set a date for a new public meeting. Mr. Sanderson made a motion, seconded by Mr. Ramirez to publish the amendments to the ordinance. Mr. Hicks asked how soon the next meeting could be set up. The Board agreed on November 12th at 5:30pm for the next public meeting.

November 12, 2015 – Special Session Meeting.

Minutes

Mr. Hicks said he wanted to reaffirm that the objective of this ordinance was originally proposed to provide a safe environment and protect the public infrastructure and the public in general. He asked the Board if they would like to speak about the ordinance and where they are going with it so far. Mr. Ramirez said he just wants them to understand they do not want to put anyone out of business and that is not their goal. Mr. Shaw said in saying that he is afraid that is what they are going to do. He said he thinks they are over regulating this industry. Mr. Penick said they are not here to hinder businesses. He said they are here to make sure things are safe for the public. He said he is a big supporter of free enterprise.

Mr. Robinson discussed the units having to move overnight in case of a fire. Mr. Sanderson said he thought the likelihood of that happening would be very rare. Mr. Robinson said they did not want the unit left unattended.

Mr. Robinson said for units occupying a compliant single vendor site they may run their apparatus but they must be able to be contained within the mobile unit when not in use. Mr. Penick said he drove around several mobile vendor locations and they have their lines out of the way and they are not causing any public nuisance or anything and their lines are insulated. He said he did not agree with making them pull up all their lines and stuff if they are in a safe environment and not causing a public nuisance. He asked if they had to be fully self-contained? Mr. Robinson said yes.

Mr. Hicks opened the meeting for public comments at 6:11 pm.

Mr. Monty Randolph asked about special events. He said they are a vendor registered in the county. He asked if it was an additional permit they would have to apply for? He said as a mobile food vendor there is a process you go through to prepare. He asked if this was going to be something they would have to look at as an additional business expense? Mr. Kesner said any vendor that sales a product in the City of Hobbs has to get a vendor’s license from the City of Hobbs. Ms. Jan Fletcher said that is correct. She said the mobile vendor license is only applicable to the businesses who have already established business registration here in Hobbs. She said you have to have a physical location within the city. She said if you are a temporary vendor outside the city limits then you would have to have a temporary license that is for seven consecutive days and the fee is 500 dollars. She said in answer to your question about special events for Gus Macker the Parks and Recreation Department establish the fee for that and there would not be a separate fee established. She said you would have to have your food license and pay Parks and Recreation for the permit.

Mr. Randolph said \$500 dollars for a 2 or 3 day event is unheard of. He said most event fees for a one day event are \$50 to \$100 dollars depending on the number of attendees at the event. Mr. Sanderson said the fees are not associated with this ordinance as presented. Ms. Fletcher said for the Gus Macker Event you would not

have to pay \$500 dollars for the two day event. She said Parks and Recreation would assess the fee but she thought it would be \$50 or \$100 dollars.

Mr. Ken Awtry said he has a mobile food trailer and he wanted to make a clarification. He said their business is event driven and he does not park in the right-of-way or outside of the right-of-way on a daily basis. He said their last event was at the drag races and they were on paved surfaces. He said he had some land and if he made the investment to put in an all-weather surface and all the utilities are hooked up he still cannot leave his unit on his land overnight? Mr. Hicks said the all-weather surface has been stricken. He said they are no longer requiring an all-weather surface. He asked about putting their addresses in 2 inch letters on their mobile vending units. He said he worries about someone coming to their house after they close up for the evening with the day's money. Mr. Kesner suggested putting a registration number on the unit instead. MOP said he thought the name and number on the unit was required by the NMDOT. Mr. Awtry asked since he was an event based business on private property will that be a problem. Mr. Hicks said that will not be a problem.

Mr. Hicks asked if anyone else would like to speak. With no one else coming forward he closed the meeting for public comments at 6:30 pm.

Mr. Robinson said if it is the desire of the Planning Board to strike the 2 inch letters that is fine. Mr. Hicks said he would like to make it consistent with the NMDOT requirements. Mr. Kesner said he did not think it needed an address posted. He thought just the business name and registration number. The Board agreed.

Mr. Sanderson said he is for the residential protection and he gets the 75% residential. He said his concern is saying that they can only be in these other places if they are 75% commercial. He said if there was a location that was 66% commercial and it was not permitted because it needed to be 75% commercial because there was unoccupied land is not right. He said the assumption is because someone may use that as residential, well they might use it as commercial too. He said this is a mobile vendor ordinance where the vendors can move. He said an area today could be compliant for a few years and then change to residential and it becomes a non-compliant area. He said if the location becomes more residential then it becomes no longer compliant. He said it is a problem if we limit vendors because it might become non-compliant. He said he is ok with the residential part of the ordinance but not comfortable with the only place they can be is a place that is 75% commercial.

Mr. Hicks asked if they just shouldn't count vacant properties? Mr. Sanderson said he thought vacant properties had to count. He said maybe the percentage needed to change. He said he doesn't think you can presume what vacant land will be. He said it will be what it is going to be and if it changes then the vendor moves on. Mr. Hicks said he agreed and they could change the ordinance to say they can be in any area that is not primary residential. Mr. Kesner said they want to strict C1Aa and on page 5 put in the restrictions that says primarily residential areas.

Mr. Hicks said since they have changed the requirement for hard surface then does "O" need to be stricken? The Board said to strike it. He said there is a fair amount of mixed use areas so that number needs to make sense. Mr. Robinson said there are two definitions. He said one is "J" and one is C1Aa. He said the only difference between the two is vacant parcels. Mr. Sanderson said if they get rid C1Aa he would be ok leaving the primary residential with the 75% figure. Mr. Kesner said the key word is developed. He said in area where 75% of the area is developed for residential use. He said then if someone has an area that has 10% for residential use and 90% that is undeveloped that would be an acceptable area? Mr. Hicks asked if he meant platted? Mr. Kesner meant built on. Mr. Hicks said they needed to define developed. He said they need to say being "used as" instead of developed.

Mr. Stone said this is not an easy issue. He said he had four suggestions. He said he did like the ideal of being more specific on the definition of primary residential area. He said the impression he gets is they want to protect the residential areas. He suggested stating a location currently utilized as a residential usage. He said C1Aa could be stricken in its entirety. He said it is a lot simpler to say if 75% of the area is being currently utilized as residential then they cannot park there. He said on the outdoor vendor has three different situations where the definitions does not include outdoor vendor. He said they might consider adding a private party catering not open to the general public. He said on page 6 there is discussion about special events. He said item Gd on page 6 should have "not subject to special events" interjected into that sentence.

Mr. Kesner said they should find out the wishes of the Planning Board on overnight parking. Mr. Sanderson said he is ok with overnight parking. Mr. Penick said he agreed. He thinks it would be a burden on the mobile vendors to roll everything up every night. Mr. Shaw agreed. He did say he was concerned about what time they become permanent if they are not moving. He said should they have a time limit. Mr. Penick said they will have to move to empty their waste. Mr. Ramirez agreed. Mr. Kesner agreed but there has to be an understanding they are mobile vendors and their units are self-contained. He said it is not a mobile vendor if they hook up to utilities. Mr. Hicks said at the Board's wishes they will remove Gd on page 6.

Mr. Kesner said as long as mobile vendors are self-contained why does it matter if there is one vendor or five as long as there is enough space for patrons to come to the location and leave the location. Mr. Robinson said on a hard surface it doesn't matter but once you get off the hard surface requirements then it would become important. Mr. Kesner said if there is only enough room for one mobile vendor then having more mobile vendors in one space would put citizens at large at risk. Mr. Kesner said if the mobile vendors are getting utilities then it needs to be listed as a mobile vendor park.

Mr. Hicks asked if there would be locations where more than one vendor could park at a particular location. Mr. Robinson said there are some locations where there are multiple lots. He said each lot would need to be developed. The Board agreed.

Mr. Hicks said they needed to discuss driveway lengths. Mr. Sanderson said he felt like 50 feet of driveway was an overkill. He said these are mobile food vendors and do we want the land owners to have to put in 50 feet of concrete. Mr. Randall said most of the setbacks on commercial development is 40 feet from the property line. Mr. Hicks said he thought 25 feet was a reasonable driveway. Mr. Penick said if these people are leasing a space then the land owner may not want a concrete driveway on their land. Mr. Shaw said finding a company who had time to put in a concrete driveway might be impossible right now but finding someone who could put down gravel may be easier. Commission Buie said if it is the land owner or the mobile food vendor who pays for the driveway they are pricing the mobile food vendors out of business. He said these are mobile food vendors and they move and are they going to be required to build a driveway every time they move. He said he thinks they need to do everything they can to keep them in business. Mr. Penick agrees.

Mayor Sam Cobb said lets digress a little bit. He said there was a rapidly expanding industry and city staff came to Commission and the Planning Board and asked that they recognize that and do something about it. He said he wanted to commend staff because their role in this process for the benefit of this Board and the public is to bring the laundry list to be reviewed and make decisions. He said for him personally the key points they discussed tonight are important. He said they do need to ensure that the appropriate atmosphere of the neighborhood is important. He said an appropriate setback for ingress and egress is important. He said the safety issues such as propane tanks are important. He said when this first started there were people without any regard for their fellow neighbors, or any regard to public safety. He said they are to a point now with a minimum amount of verbiage they can put together an ordinance that would create an appropriate level playing field so the vendors and the citizens know what they have to do to compete in the market.

Mr. Hicks said he thought they should recommend a 20 foot gravel driveway. Mr. Sanderson said they can always increase the requirement in the future if they find instances where it is not serving the public well.

Mr. Randall asked if they wanted a minimum of 20 foot driveway with compacted gravel. He said a typical driveway width is 21 feet. Mr. Robinson said for the inspectors they are just going to look at the site not get into densities. Mr. Kesner said he thinks it would make more sense to define square footage for mobile vendors than restrict just one mobile vendor per area. Mr. Robinson said a Mobile Food Court is defined by multiple units and demands a higher development. He said it will be difficult for the Environmental Department to be able to tell the difference between a food court or multiple food vendors. Mr. Kesner said with Mobile Food Parks they can put in restrooms and picnic tables and have utility hookups.

Mr. Shaw said he would like to see 2 or 3 units on the same location. Mr. Hicks said there could be two types of outdoor vendor parks. He said one park would not have seating or bathrooms or permanent hookups. He said it could have minimum for space for access and sufficient driveways and parking. He said the 2nd type would have all the hookups and restrooms. Mr. Hicks asked if staff would put this together that would satisfy the minimal safety areas for a multiple vendor area. Mr. Robinson said such as mobile vendor park A and B. He said "A" could have onsite consumption not allowed and "B" being onsite consumption allowed.

Member of the public said that since the last meeting they had there have been three mobile vendors that have closed their businesses. Mr. Penick said he feels like they have proved tonight that they are trying to work with the vendors and not hurt their business and still protect their business.

The Board directed staff to make the recommended changes for future approval by the Planning Board.

December 15, 2015 – Regular Meeting.

Minutes

Mr. Robinson said the Mobile Vendor ordinance they have been considering has been currently regulated in the Business Registration Municipal Code. He said the last time they reviewed the proposed Mobile Vendor Ordinance the Board had requested changes and staff has not made the changes yet. He said if it is the Board's will to restrict Mobile Vendors from residential properties then that can be expressed with the two paragraphs that would amend the existing code. He said that is under the definitions on the first page under Business registration. He said they could add the paragraph describing what a mobile unit is. He said the proposed Mobile Vendor Ordinance was a lot more comprehensive. He said the only thing the proposed changes would do is eliminate the units outside of the residential areas.

Mr. Robinson said in his opinion the Municipal Code is the first line of defense and a lot more explanatory to the vendors. Mr. Kesner said he thought this Mobile Vendor Ordinance were not the wishes of the Planning Board so they were trying to figure out an alternative way of regulating the vendors. He said they wanted to hit the highlights that were important to the Board. He said the highlights were no residential areas and no units attached to infrastructure. Mr. Shaw asked what about the 75% rule on residential was? Mr. Robinson said if there are two houses in a residential neighborhood that is a 100 lot block and out of that the two houses occupy ten of the lots, then a Mobile Vendor could go on the two lots. Mr. Shaw said they have to state that it cannot be in violation of restrictive covenants. Mr. Kesner said the Mobile Vendor has the right to locate where they want to as long as it does not violate city ordinance.

Mr. Shaw said he thought when they go in to get their permit it has to have an address attached to it. Mr. Robinson said that was true in the more comprehensive Mobile Ordinance but with this it does not have to have an address. Mr. Sanderson said he felt like what they have here is a step in the right direction and that it doesn't go so far that you have to look at backing off. He said you could add to it if you had too.

Commissioner Buie asked if they could get a variance. Mr. Robinson said he thinks that everything in the Municipal Code is subject to a variance. He said everything in the variance request procedures has always been to the property line not to the center of the unit. He said the reason for that is they are always trying to mitigate the usages that may not be compliant. He said they want to protect the residential area which is why they have buffering laws. He said since this proposed amendment is not tying down any site development it will open up a lot more spaces.

Mr. Kesner said there are Mobile Vendors that are connected to two gallon propane tanks and others that have set up tables and chairs and they will be in violation of the IBC Codes. He said it is not addressed in this code but by the IBC. He said those vendors will have to comply with the site built location or convert back to a Mobile Food Vendor. Mr. Kesner asked if the only thing they are changing on the existing code is the two highlighted sections that are modifying definitions. Mr. Robinson said yes and numbers. He said if this is the Boards wish to send this to Commission then this will be just like a regular ordinance change. He said there will be a publication by the Commission and will be in the Newspapers and then the Commission will do a final adoption approximately 45 days later.

Mr. Penick asked with these changes are they allowing vendors to hook up to utilities? Mr. Robinson said no hooking up to utilities is expressly forbidden. He said that is in the last line where it says connection to municipal or franchise utilities negates the mobile status of the unit and subjects the site and any structure attached thereto to be in full compliance with all commercial developmental rules, regulations and permitting requirements. Mr. Robinson said the Municipal Code is the first line of direction to the people wanting to have a business in your community. He said we can tell them to look at the Municipal Code first and be compliant with the Municipal Code and then in all likelihood you will be compliant with other governing regulations that the municipality has adopted. Mr. Shaw asked if there wasn't some way they could hookup like an RV hooks up to utilities? Mr. Robinson said they would have to be in a mobile vendor park to do that. Mr. Penick said he thought it would force 90% of mobile vendors out of business if they couldn't hook up to utilities. Mr. Kesner said it will require them to be self-contained and purchase a generator. Mr. Penick asked if he would rather them have a generator than hook up to power? Mr. Kesner said no he would not but he would rather them have a site that is developed that meets their needs.

Mr. Shaw said he is not convinced that IBC restricts them from hooking up to utilities. Mr. Stone said that if someone hooks up to utilities then they are no longer a mobile food vendor. He said they are then treated like a normal restaurant. He said there are three other cities in NM that are struggling with this issue. He said there are very different issues in each of these communities. He said he thought it needed to be differentiated between Mobile Food Vendor and RV's. He said if you hookup to power and sewer you are no longer a mobile food vendor. He said they need to be as specific and straightforward as possible.

Mr. Kesner said that Mr. Stone hit the two important issues which is private property and residential. Mr. Shaw said and the third issue is that they be self-contained. Mr. Robinson said this simplistic approach doesn't negate someone from creating a Mobile Food Park in the future. He said there would have to be a variance for that site. Commissioner Buie said there has to be give and take on the Mobile Vendor side because they are getting into business very inexpensively compared to restaurants in town. He said he thinks this Board has also given a lot. He said there are also variances that can be done. Mr. Stone said he need to clear up one thing he said when he said they have looked at 100's of ordinances that was a stretch there have just been several. Mr. Kesner asked what the consensus of the Board was to move forward with changing the current ordinance or go back and look at adopting the ordinance they were reviewing in the past. Mr. Penick said he likes the changes to the existing ordinance. Mr. Drennan said he was in agreement with Mr. Penick and he thought the other ordinance was too restrictive. He said we need to protect the majority of business owners. Mr. Ramirez said that he has attended every meeting on this issue and a lot of the Mobile Vendors that have left is because they did not understand the ordinance. He said he thinks they should all understand now and he thinks they should move this forward. Mr. Shaw said that he agreed and simplifying it down is good. He said he still has a little bit of problem that they cannot hook up to electricity. He said he definitely thinks they should move forward with this. Mr. Sanderson said he agreed. He said nothing is perfect but this is closer and he is more comfortable with this.

Mr. Ramirez made a motion, seconded by Mr. Penick to approve the changing of the two current ordinances with the wording as proposed from the Planning Department. The vote on the motion was 6-0 and the motion carried. Mr. Stone asked if the motion was to send this to the City Commission? Mr. Kesner said yes with the wording changes from the current ordinances and kill the proposed Mobile Vendor Ordinance.