



**City of Rio Communities Council Special Business Meeting**  
**City Council Chambers - 360 Rio Communities Blvd**  
**Rio Communities, NM 87002**  
**Wednesday, November 29, 2023, 6:00 PM**  
**Agenda**

*Please silence all electronic devices.*

**Mayor - Joshua Ramsell**  
**Mayor Pro Tem - Margaret R. Gutjahr**  
**Council - Arthur Apodaca, Lawrence R. Gordon, Jimmie Winters**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. APPROVAL OF AGENDA**
- 5. SWEARING IN OF POLICE OFFICER**
  
- 6. PUBLIC HEARING**
  - **MOTION AND ROLL CALL VOTE TO RECESS SPECIAL BUSINESS MEETING AND GO INTO PUBLIC HEARING**
  
  - **CONSIDERATION OF ORDINANCE NO. 2023-92, AN ORDINANCE SUPERSEDING OR REPEALING ORDINANCE NO. 2023-88, CHAPTER 04 ZONING CODE**
  
  - **MOTION AND ROLL CALL VOTE TO GO BACK INTO SPECIAL BUSINESS MEETING SESSION**
  
- 7. DISCUSSION, CONSIDERATION, AND DECISION – FINAL CONSIDERATION OF ORDINANCE 2023-92, AN ORDINANCE SUPERSEDING OR REPEALING ORDINANCE NO. 2023-88, CHAPTER 04 ZONING CODE**
  
- 8. DISCUSSION, CONSIDERATION, AND DECISION – SCHEDULE SPECIAL MEETING WITH PLANNING & ZONING COMMISSION ON DECEMBER 12, 2023**
  
- 9. DISCUSSION, CONSIDERATION, AND DECISION – CONTINUE SPECIAL ASSIGNMENT IN THE CLERK’S OFFICE FOR THE ASSISTANT TO THE CITY MANAGER, FINANCE OFFICER/TREASURER AND DEPUTY CLERK**
  
- 10. DISCUSSION – CITY COUNCIL CODE OF CONDUCT**
  
- 11. ADJOURN**

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<https://www.facebook.com/riocommunities>

NOTE: THIS AGENDA IS SUBJECT TO REVISION UP TO 72 HOURS PRIOR TO THE SCHEDULED MEETING DATE AND TIME (NMSA 10-15-1 F). A COPY OF THE AGENDA MAY BE PICKED UP AT CITY HALL, 360 RIO COMMUNITIES BLVD, RIO COMMUNITIES, NM 87002. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AND OR SERVICE TO ATTEND OR PARTICIPATE IN THE MEETING, PLEASE CONTACT THE MUNICIPAL CLERK AT 505-861-6803 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.

**City of Rio Communities, New Mexico**

**ORDINANCE 2023 – 92**

**WORKING DRAFT**

**AN ORDINANCE SUPERSEDING OR REPEALING ORDINANCE NO. 2023-88 DATED:  
August 14, 2023. CHAPTER 04, ZONING CODE**

**PASSED, APPROVED AND ADOPTED THIS \_\_\_<sup>th</sup> DAY OF NOVEMBER 2023, BY THE GOVERNING BODY OF  
THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

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Joshua Ramsell, Mayor

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Margaret R. Gutjahr,  
Councilor, Mayor Pro-tem

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Arthur Apodaca,  
Councilor

---

Lawrence Gordon,  
Councilor

---

Jimmie Winters,  
Councilor

ATTEST:

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Deputy Municipal Clerk

**City of Rio Communities, New Mexico**

**Chapter 4 of Municipal Ordinances**

**ZONING CODE**

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**APPENDIX B LINE OF SIGHT DIAGRAM (PLACEHOLDER)**

# City of Rio Communities, New Mexico

## CHAPTER 4 THE ZONING CODE

### ARTICLE 1 CODE OVERVIEW

#### 4-1-1 TITLE

#### 4-1-2 PURPOSE

#### 4-1-3 STATUTORY AUTHORITY

#### 4-1-4 JURISDICTION

#### 4-1-5 PUBLIC ACCESS TO THE ZONING CODE

#### 4-1-6 SUMMARY OF CODE

#### 4-1-1 TITLE

This CODE, including all official maps, plats and charts, descriptive and explanatory matter shall be known as the "Zoning Code" of the City of Rio Communities.

#### 4-1-2 PURPOSE

It is the intent and purpose of this Zoning Code to encourage the most appropriate use of land throughout the City of Rio Communities' jurisdiction by establishing conditions that stimulate a climate for balanced and harmonious development that best preserves the general health, welfare, safety and order and promotes prosperity that is efficient and economically viable to all residents. See NMSA 1978, § 3-21-16. Preservation of the character of current and future planned neighborhoods is also a goal of this ordinance.

#### 4-1-3 STATUTORY AUTHORITY

Authority is granted for the creation, adopted and implementation of this Zoning Code pursuant to New Mexico Statutes, Articles 3-21-1 through 3-21-26 as amended and shall be applicable to all lands and property within the corporate limits of the City of Rio Communities, New Mexico, hereafter referred to as "the City."

#### 4-1-4 JURISDICTION

This Zoning Code has jurisdictional authority within the City boundaries and concurrent authority for all or any portion of territory within its extraterritorial zoning jurisdiction pursuant to NMSA § 3-12-2(B)(C)(D).

#### 4-1-5 PUBLIC ACCESS TO THE ZONING CODE

The Zoning Code for the City of Rio Communities shall be filed with the City Clerk and shall be made available for public inspection and review by any person. Copies of the Zoning Code can be purchased upon request or accessed through the City's website at [riocommunities.net](http://riocommunities.net).



**4-1-6 SUMMARY**

In accordance with Chapter 3, Article 21, Sections 1-26 of New Mexico State Statutes (NMSA 1978, §3-21-1 to -26), the following Zoning Codes set forth policies and regulations for land use within the incorporated areas of the City of Rio Communities, New Mexico.

- A.** To preserve the character, stability, orderly growth and development and the general welfare for all residents within the City of Rio Communities, all property located within the legal boundaries of the City shall be divided into zoned districts in accordance with their construction, fitness, nature, and intended use. Pursuant to NMSA 1978, §3-21-1, this Zoning Code may regulate and restrict within its jurisdiction the:
  - 1.** Height, number of stories and size of buildings and other structures;
  - 2.** Percentage of a lot that may be occupied;
  - 3.** Size of yards, courts and other open space;
  - 4.** Density of population; and
  - 5.** Location and use of buildings, structures and land for trade, industry, residence or other purposes.
  
- B.** Specifically, these general zoning districts are:
  - 1.** Residential (R-1 & R-2)
  - 2.** Manufactured Housing Subdivision (MH-1)
  - 3.** Manufactured Mobile Home Park (MH-2)
  - 4.** Commercial (C-1, C-2 & C-3)
  - 5.** Business Manufacturing (B-M)
  - 6.** Industrial (I-3)
  
- C.** Appropriately, this Zoning Code shall describe in detail the standards for permitted, conditional or special land use accorded within each of these districts, as well as variances, enforcement, and administrative processes for permits, appeals and forums for public hearings, complaints and suggestions.

- D.** Ultimately, in accordance with NMSA 1978, § 3-21-5, this Zoning Code shall strive to:
- 1.** Prevent congestion in streets and other rights-of-way;
  - 2.** Secure the public safety from fire, panic and other dangers;
  - 3.** Promote health and general welfare;
  - 4.** Assure adequate light and air for all properties;
  - 5.** Prevent the overcrowding of land and undue concentration of population;
  - 6.** Facilitate adequate provisions for transportation, water, sewer, schools, parks, and other public facilities and reduce the effect of natural hazards;
  - 7.** Control and abate the unlawful use of structures, buildings, or land;
  - 8.** Encourage the conservation of energy in the use of structures, buildings, and land in the City;
  - 9.** Provide a permanent public record of all proceedings and actions concerning the Code and its enforcement.
- E.** Questions concerning placement of property borders are the responsibility of the parcel owners.

## **ARTICLE 2    TYPES OF USES FOR EACH ZONE**

- 4-2-1 PURPOSE**
- 4-2-2 PERMITTED USE DEFINED**
- 4-2-3 CONDITIONAL USE DEFINED**
- 4-2-4 SPECIAL USE DEFINED**

**4-2-1 PURPOSE**

This Article describes the intended purpose, permitted, conditional or special uses for residential, modular, manufactured, and mobile homes, commercial, light/medium industrial, heavy industrial, recreational parks or overlay zone districts in the City.

**4-2-2 PERMITTED USE DEFINED**

A permitted use is the use of land within a defined zoned district that is specific and allowable by right within a zoning district, except as otherwise restricted in this code.

**4-2-3 CONDITIONAL USE DEFINED**

A conditional use is the use of land within a defined zoned district that is provisional when compatible to the conditions of the land and that specific zoning district. Conditions may include the addition of landscaping, walls, parking areas, fire protection mechanisms or other requirements to avoid noise, vibration, odor, improve safety and health hazards. Applicants are required to meet the approved conditions. Failure to do so will result in enforcement action and the possible revocation of the approval.

**A.** Conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. The Commission shall determine if a conditional use is compatible or necessary to the general welfare, safety, health or convenience to residents residing in that zone district. The City may impose standards for the development of a conditional use that will not adversely affect the public or surrounding property owners. Compliance with the Comprehensive Plan may also be considered.

**4-2-4 SPECIAL USE DEFINED**

A special use is the use of land within a defined zoned district, where the proposed use of that land is of an unusual or unique character that may be unforeseen, offensive, or incompatible with that defined zoned district.

**A.** Special uses requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning

or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. The Commission shall determine if a special use is compatible and necessary to the general welfare, safety, health, or convenience to residents residing with that zone district. The City may impose standards for the development of a special use to ensure the special use will not adversely affect the public or surrounding property owners. Compliance with the Comprehensive Plan may also be considered.

**4-2-5 PROHIBITED USES**

**The following are considered prohibited uses inside the City Limits of the City of Rio Communities (unless otherwise noted in the I-3 Zone requirements of this Ordinance). Also, no I-3 Zone is allowed inside the City boundaries that exist as of the date of the adoption of this Ordinance):**

- 1. Wind Turbine Recycling (Graveyard)**
- 2. Slaughtering or rendering of animals**
- 3. Auto wrecking yard**
- 4. Sawmills, planing mills, and other raw wood processing facilities.**
- 5. Onsite facilities for the manufacturing or bulk storage of petroleum products, natural gas, geothermal resources or other hydrocarbons.**
- 6. Granaries**
- 7. Battery production /Tires (except for "Green Manufacture")**
- 8. Nuclear energy and/or waste manufacture or storage**
- 9. Smelting**

## ARTICLE 3 ZONES

- 4-3-1 SINGLE FAMILY, LOW DENSITY RESIDENTIAL (R-1)
- 4-3-2 HIGH DENSITY RESIDENTIAL (R-2)
- 4-3-3 MANUFACTURED HOUSING SUBDIVISION (MH-1)
- 4-3-4 MANUFACTURED MOBILE HOME PARK (MH-2)
- 4-3-5 PARKS, RECREATION AND OPEN SPACE DISTRICT (PRO)
- 4-3-6 LIMITED RESIDENTIAL NEIGHBORHOOD RETAIL AND SERVICE (C-1)
- 4-3-7 COMMUNITY COMMERCIAL AND RETAIL USE (C-2)
- 4-3-8 HEAVY COMMUNITY COMMERCIAL AND RETAIL USE (C-3)
- 4-3-9 LIGHT/MEDIUM INDUSTRIAL USE (I-1/I-2)
- 4-3-10 HEAVY INDUSTRIAL (I-3)
- 4-3-11 PLANNED DEVELOPMENT DISTRICT (PD)

### 4-3-1 SINGLE FAMILY, LOW DENSITY RESIDENTIAL (R-1)

#### A. Purpose

The R-1 Zone is intended to accommodate detached single-family dwelling units on parcels of less than 5 acres and small multi-family housing consisting of no more than 4 units that would maintain and protect a low to medium density residential character of development.

1. Accessory uses that are incidental to and customarily found with the R-1 District are also permitted.
2. Public sewer and water systems must be installed, when available.
3. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of Sewage Treatment must be obtained, if not connected to Public Sewage and Water.
4. Single section mobile manufactured housing is not permitted in the R-1 zone. NMSA 1978, § 3-21A-4.

#### B. R-1 Development Standards

Before the issuance of a building permit, evidence of compliance with this ordinance Chapter 4 through 6 shall be provided to the Planning and Zoning Commission for review and approval. Any open space or park development mitigation shall be consistent with Chapter 6 and the City's Comprehensive Plan.

1. All detached single-family dwelling units to include multi-sectional manufactured and modular constructed units shall meet the applicable minimum construction standards as established in Title 14 (Housing and Construction) of the New Mexico Administrative Code (NMAC).

2. Though multi-sectional and modular homes are permitted in an R-1 residential zone, such homes shall be compatible with the character and aesthetic standards of the surrounding neighborhood. NMSA 1978, § 3-21A-3. The minimum character and aesthetic standards shall be:
  - a. The skirting wall shall match the exterior color of the home; and
  - b. The exterior siding materials are to be either hardboard, vinyl, composite, stone/brick, metal, or stucco;
  - c. Concrete or masonry steps are to be provided for the entry on the street side of the home;
  - d. The roofing style and materials may be flat roof (Pueblo style), metal rib roof or a shingle or tile roof. All roofs other than a flat roof shall have a minimum pitch of 3:12. All pitched roofs other than a roof behind a parapet shall have a minimum six (6) inch eave on all sides of the home.

**C. R-1 Permitted Use examples include, but not limited to the following:**

1. ACCESSORY BUILDING is subject to provisions of this ordinance.
2. CONSTRUCTION, LAYDOWN YARD OR STRUCTURE (TEMPORARY)
  - a. Such yard or structure shall be removed upon the completion of construction or within three (3) years from date of permit, or whichever is sooner.
  - b. Construction yards and structures shall be maintained in a neat and orderly fashion and open yards shall be enclosed by a fence five (5) feet in height.
  - c. There shall be no fence or wall more than three feet (3) in total height above any street-curb located within twenty-five feet (25) of a street intersection.
3. GARAGE OR YARD SALE OR SIMILAR USE
  - a. Four (4) garage or yard sales are permitted in a one (1) year period at a single address and each sale shall not exceed three (3) consecutive days.
4. GREENHOUSE (NON-COMMERCIAL), GARDEN OR TOOL SHEDS
  - a. When detached from the main dwelling, each structure is subject to the provisions of Article 5 of the Accessory Building Code.
5. GROUP HOMES subject to requirements of NMSA 1978, § 3-21-1(C) as amended.
6. HOME OCCUPATION is subject to the provisions of Section 4-3-1(E).
7. PLAYGROUNDS, BALLFIELDS, AND COURTS AS SPACE PERMITS
8. HOBBY KENNEL (PRIVATE RESIDENTIAL) (in accordance with the animal Ordinance)

- a. A residential hobby kennel must be compatible with the uses of property in the surrounding area that would not create a burdensome annoyance to those in the vicinity and would not cause a significant risk to health.
  - b. The kennel and surrounding land area must be regularly cleaned in a manner that produces no odor to neighbors and is consistent with all setbacks.
- 9. STORAGE (RECREATIONAL VEHICLES)**
- a. Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard with no limit in the rear yard when separated by at least seven and one-half (7 1/2) feet from the property line.
  - b. Storage of personal recreation vehicles, boats, trailers, or similar uses in the front yard setback of property shall not exceed ten (10) consecutive days in any year or collectively, more than ten (10) days in any year.
  - c. Total “open space” requirements shall be honored for the lot. See Article 6.
- 10. SWIMMING POOL (PRIVATE)**
- a. Permitted only when a protective barrier or fence five (5) feet in height is provided around the yard, lot or pool area. Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050.
  - b. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to ensure safety.
- 11. TELEVISION AND RADIO TOWERS AND ALL OTHER FREE-STANDING TOWERS (PUBLIC AND PRIVATE USE)**
- a. All towers and antennas erected for the reception of satellite or radio signals shall be obtained from an approved manufacturer. Home-made towers or antennas are prohibited.
  - b. Such towers and antennas for the reception of satellite or radio signals shall be permitted and erected only in rear yards or securely mounted on roof.
  - c. The manufacturer of any tower or antenna shall expressly specify that their product will withstand maximum wind gusts of 90 M.P.H.
  - d. All towers and antennas shall be constructed in accordance with the state or local governing authority for the proposed site; shall comply with the National Environmental Policy Act (NEPA); the National Historic Preservation Act (NHPA); and shall require notification to the Federal Aviation Administration (FAA); and Antenna Structure Registration (ASR) with the FCC.
  - e. The height of any tower and antenna shall not exceed ten (10) feet above the highest ridgeline of any structure within a 300-foot radius of the tower or antenna (see section 4-16-3a for further information); and
  - f. The roofing style and materials can be flat roof (Pueblo style), metal rib roof

or a shingle or tile roof. All roofs other than the flat roof shall have a minimum pitch of 3:12 and all pitched roofs other than a roof behind a parapet shall have a minimum six (6) inch eave on all sides of the home.

**12. EXTERIOR LIGHTING (PRIVATE OR RESIDENTIAL USE)**

Any exterior lighting shall not project onto neighbor's property.

**D. R-1 Conditional Use**

R-1 conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

- 1. MULTI-FAMILY HOUSING DUPLEX, TRIPLEX CONDOMINIUMS OR CLUSTER HOMES (4 UNITS OF LESS)**
  - a. Off-street paved parking shall be provided at the rate of 2 spaces per living unit.
  - b. Solid screening (minimum 4 feet high) shall be installed on all sides of property that border other neighbors or property or street.
  - c. Line of Sight Rules shall be maintained. See Article 4-11-8.
  - d. A multifamily dwelling shall not be constructed on a lot that is less than 1/2 (.5) acre or 21,780 Square Feet in area.
  - e. A duplex unit shall only be constructed on a lot that is at least 1/2 (.5) acre.
  - f. A quadraplex (4 units) shall only be constructed on a lot that is at least .9 of an acre (39,204 SF) or greater.
  - g. Second kitchens within the dwelling unit but remains as single family use.
  - h. Health care as an occupation with adequate parking available.
  - i. Family day care for 3-6 children on a daily basis.
  - j. Walls or fences of over 3 feet tall in front yard.
  - k. Non-profit park - swimming pool, tennis court and recreational equipment.
  - l. Temporary festival.
  - m. School.

**E. R-1 Special Use**

R-1 special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Uses. Examples of Special Use are:

- a. HAIR SALONS (Barber and Beauty Shops)



- b. BED AND BREAKFAST INN
- c. CHILD CARE CENTER (six or more children)
- d. COMMUNITY BUILDING
- e. CONVENIENCE STORE (three thousand (3,000) square feet (SF) or less
- f. GROCERY STORE (three thousand (3,000) square feet (SF) or less
- g. SCHOOLS (Public, Private, University, Junior College or Parochial)

#### **4-3-2 HIGH DENSITY RESIDENTIAL (R-2)**

##### **A. R-2 Purpose**

The R-2 Zone District is intended to accommodate multiple family dwelling units and accessory structures and uses that maintain and protect high density residential development characteristic of apartments, patio homes, cluster homes, condominiums, and similar housing. This zone also permits one- and two-family homes.

1. Trade services and other uses characteristic of a neighborhood are permitted only as a special use.
2. Single family dwellings to include multi-sectional manufactured and modular homes shall comply with Sections 4-3-1(B)(1) and 4-3-1(2) of this Code.
3. Single section mobile manufactured housing is not permitted in the R-2 zone. NMSA 1978, § 3-21A-4.
4. All high-density residential homes in the R-2 district shall comply with the 2009 New Mexico Residential Building Code, 14.7.3 NMAC.
5. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of Sewage Treatment must be obtained, if not connected to public sewage and water.

##### **B. R-2 Development Standards**

Before the issuance of a building permit, evidence of compliance with Articles 4 through 6 shall be provided to the Planning and Zoning Commission for review and approval. Any open space or park development mitigation shall be consistent with Chapter 6 and the City's Comprehensive Plan. Follow standards found in 4-3-1-B.

##### **C. R-2 Permitted Use examples include, but not limited to the following:**

ACCESSORY BUILDING is subject to provisions of Article 5.

1. APARTMENTS
2. BED AND BREAKFAST INN

- 3. BOARDING HOUSE**
- 4. CHURCH (occupancy of ten (10) or more)**
- 5. CLUSTER HOMES (maximum of sixteen (16) units)**
- 6. CONDOMINIUMS (Residential or Professional, maximum of sixteen (16) units)**
- 7. CHILD CARE CENTER, NURSERY OR SIMILAR USE**
  - a.** Play areas shall be in accordance with state licensing requirements and enclosed with a solid wall or fence five (5) feet in height.
  - b.** There shall be no solid fence or wall more than three (3) feet above street-curb level located within twenty-five (25) feet of a street intersection.
- 8. CONSTRUCTION, LAYDOWN YARD OR STRUCTURE (TEMPORARY).**
  - a.** Such yard or structure shall be removed upon the completion of construction or within one (1) year from date of permit, whichever is sooner.
  - b.** Construction yards and structures shall be maintained in a neat and orderly fashion and open yards shall be enclosed by a fence five (5) feet in height.
  - c.** There shall be no fence or wall more than three feet (3) in total height above street-curb located within twenty-five feet (25) of a street intersection.
- 9. DWELLINGS (Single or Multi-Family Units, Apartments, Patio Homes or Condominiums)**
- 10. GARAGE OR YARD SALE OR SIMILAR USE**
  - a.** Four (4) garage or yard sales are permitted in a one (1) year period at a single address.
  - b.** A sale shall not exceed three (3) consecutive days.
- 11. GREENHOUSE (NON-COMMERCIAL), GARDEN OR TOOL SHED**
  - a.** When detached from the main dwelling, each structure is subject to the provisions of Article 5 of the Accessory Buildings Code.
- 12. GROUP HOMES subject to requirements of NMSA 1978, § 3-21-1(C) as amended.**
- 13. HOME OCCUPATION is subject to the provisions of Section 1-7-5.**
- 14. HOBBY KENNEL (PRIVATE RESIDENTIAL)**
  - a.** A residential hobby kennel must be compatible with the uses of other property in the surrounding area and shall not create a burdensome

annoyance to those in the vicinity or cause a risk to health.

- b. The kennel and surrounding land area must be cleaned regularly in a manner that produces no odor to neighbors and is consistent with all setbacks.

**15. PLAYGROUNDS, BALLFIELDS OR COURTS AS SPACE PERMITS**

**16. STORAGE (RECREATIONAL VEHICLES)**

- a. Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard with no limit in the rear yard when separated by at least five (5) feet from the property line.
- b. Storage of personal recreation vehicles, boats, trailers, or similar uses in the front yard setback of property shall not exceed ten (10) consecutive days in any year or collectively, more than ten (10) days in any year.
- c. Total "open space" requirements shall be honored for the lot. See Article 6.

**17. SWIMMING POOL (PRIVATE)**

- a. A private swimming pool is permitted only when a protective barrier or fence five (5) feet in height is provided around the yard, lot, or pool area. Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050.
- b. The pool shall be no closer than five (5) feet from any property line and approval from all applicable utility companies is required to insure overhead and underground safety.

**18. TELEVISION, RADIO AND ALL OTHER FREE-STANDING TOWERS OR ANTENNAS (PUBLIC AND PRIVATE USE)**

- a. All towers and antennas erected for the reception of satellite or radio signals shall be obtained from an approved manufacturer. Home-made towers or antennas are prohibited.
- b. Such towers and antennas for the reception of satellite or radio signals shall be permitted and erected only in rear yards or securely mounted on roof.
- c. The manufacturer of any tower or antenna shall expressly specify that their product will withstand maximum wind gusts of 90 M.P.H.
- d. All towers and antennas shall be constructed to meet Uniform Building Code and New Mexico Construction Industries Division standards.
- e. The height of any towers and antennas shall not exceed ten (10) feet above the highest ridgeline of any structure within a 300-foot radius of the tower or antenna.

**D. R-2 Conditional Use**

R-2 conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and

Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

1. PRIVATE CLUB OR LODGE
  - a. Permitted when used in conjunction with non-profit organizations such as Lions Club, Elks or Moose Lodge, and the like, and when the development meets the planning criteria of the Commission.
  - b. Building(s) shall not be located within one hundred (100) feet of an R-1 Zone.
  - c. Private clubhouses and game rooms are also permitted when used as part of an apartment, condominium, or townhouse complex, provided such development meets the planning criteria of the Commission, and provided each building(s) shall not be located within fifty (50) feet of an R-1 Zone.
2. CONVENIENCE STORE (< 1,000 square feet) for use of facilities residents.
3. Day care center for over 6 children for less than 24 hours per day.
4. School.
5. Temporary festival.
6. Walls or fences of over 3 feet tall in front yard.
7. Non-profit park - swimming pool, tennis court and recreational equipment.
8. BARBER AND BEAUTY SHOPS
9. CONVENIENCE STORE (two thousand (2,000) square feet (SF) or less

**E. R-2 Special Use**

R-2 special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

1. ATHLETIC CLUBS OR BATHHOUSES
2. BARBER AND BEAUTY SHOPS
3. CHURCH (Occupancy of 10 or more)
4. COMMUNITY BUILDING (Public or Private)

5. CONVENIENCE STORE (Three thousand (3,000) square feet (SF) or less)
6. GAS PUMPS (Accessory to a grocery or convenience store)
7. GOLF COURSE OR COUNTRY CLUB
8. GROCERY STORE (Three thousand (3,000) square feet (SF) or less)
9. HALFWAY HOUSE OR QUASI-INSTITUTIONAL HOUSE
10. HOSPITAL OR OVERNIGHT CLINIC
11. NURSING HOME, CONVALESCENT CENTER, REHABILITATION OR RETIREMENT HOME
12. PROFESSIONAL OFFICES
13. PROFESSIONAL OFFICES (that provide health services such as medical, chiropractic or dental and certain professional offices that have a low traffic volume such as attorneys or accountants, provided such offices maintain the residential character of the neighborhood and zoning where they are located)
14. SCHOOL (Public, Private, or Parochial)
15. SWIMMING POOL (Public, Commercial or Private)

**4-3-3 MANUFACTURED HOUSING SUBDIVISIONS (MH-1)**

- A.** Authority is granted pursuant to NMSA 1978, Section 3-21A-4 as amended that reads in part: “[a] zoning agency... may regulate the occupancy or location of dwelling units in such a way as to affect the reasonable regulation of mobile homes (manufactured housing units produced prior to 1976). Such regulation may exclude mobile homes from residential-use districts and restrict them to mobile home parks or mobile home subdivisions. The lot the unit is placed on is individually owned and not part of the park complex.
- B. MH-1 Purpose**
1. The MH-1 Zone is intended to accommodate detached single-family manufactured dwelling units on parcels of less than five (5) acres that would protect a low to medium density residential character of development.
  2. No other type of dwelling, except as stated above in 4-3-3(A)(1), is permitted in the MH-1 Zone.

3. Accessory uses that are incidental to and customarily found with the MH-1 Zone are also permitted.
4. Public sewer and water systems must be installed, when available.
5. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.
6. A Manufactured Home though technically “mobile” shall be securely moored upon a solid foundation or until such time, the home is moved.

**C. MH-1 Development Standards**

1. Before the issuance of a building permit, evidence of compliance with Article 6 of this Code shall be provided to the Planning and Zoning Commission for review and approval.
2. Any open space or park development mitigation shall be consistent with Article 6 and the City’s Comprehensive Plan.

**D. MH-1 Permitted Use examples include, but not limited to the following:**

1. ACCESSORY BUILDINGS are subject to provisions of Article 5 of this Code.
2. CHURCH (Occupancy of 10 or more)
3. DWELLINGS (Single -family units)
4. GARAGE OR YARD SALE OR SIMILAR USE
  - a. Four (4) separate garage or yard sales are permitted in a one (1) year period at a single address.
  - b. A garage or yard sale shall not exceed three (3) consecutive days.
5. GREENHOUSE (NON-COMMERCIAL), GARDEN OR TOOL SHED
  - a. When detached from the main dwelling the structure is subject to the provisions of Accessory Buildings in Article 5 of this code.
6. GROUP HOMES subject to requirements of NMSA 1978, § 3-21-1(C) as amended.
7. HOME OCCUPATIONS are subject to the provisions of Article 4-7-5 of this Code.
8. MANUFACTURED HOMES are subject to the provisions of Article 3.

- 9. HOBBY KENNEL (PRIVATE RESIDENTIAL)**
  - a. A residential hobby kennel must be compatible with the uses of property in the surrounding area that would not create a burdensome annoyance to those in the vicinity and would not cause a significant risk to health.
  - b. The kennel and surrounding land area must be regularly cleaned in a manner that produces no odor to neighbors and is consistent with all setbacks.
  
- 10. PLAYGROUNDS, BALLFIELDS OR TENNIS AND BASKETBALL COURTS AS SPACE PERMITS**
  
- 11. STORAGE (RECREATIONAL VEHICLES)**
  - a. Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard with no limit in the rear yard when separated by at least five (5) feet from the property line.
  - b. Storage of personal recreation vehicles, boats, trailers, or similar uses in the front yard setback of property shall not exceed ten (10) consecutive days in any year or collectively, more than ten (10) days in any year.
  - c. Total “open space” requirements shall be honored for the lot. See Article 6.
  
- 12. SWIMMING POOL (PRIVATE)**
  - a. Permitted only when a protective barrier or fence five (5) feet in height is provided around the yard, lot, or pool area. Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050.
  - b. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to insure overhead and underground safety.
  
- 13. TELEVISION, RADIO TOWERS AND ALL OTHER FREE-STANDING TOWERS (PUBLIC AND PRIVATE USE)**
  - a. All towers and antennas erected for the reception of satellite or radio signals shall be obtained from an approved manufacturer. Home-made towers or antennas are prohibited.
  - b. Such towers and antennas for the reception of satellite or radio signals shall be permitted and erected only in rear yards or securely mounted on roof.
  - c. The manufacturer of any tower or antenna shall expressly specify that their product will withstand maximum wind gusts of 90 M.P.H.
  - d. All towers and antennas shall be constructed to meet Uniform Building Code and New Mexico Consolidates Industries Division standards.
  - e. The height of any towers and antennas shall not exceed ten (10) feet above the highest ridgeline of any structure within a 300-foot radius of the tower or antenna.

**14. TENNIS COURTS (PRIVATE FOR RESIDENTIAL USE)**

1. Any exterior lighting shall not project onto neighbor's property.

**E. MH-1 Manufactured Housing Special Uses**

MH-1 zone special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

**1. BARBER AND BEAUTY SHOPS**

- a. A business permit shall be required. See Article 7 for specific requirements and procedures for granting of a business license.

**2. CHILD CARE CENTER, NURSERY OR SIMILAR USE**

- a. Play areas shall be in accordance with state licensing requirements and enclosed with a solid wall or fence five (5) feet in height.
- b. There shall be no solid fence or wall more than three (3) feet above street-curb level located within twenty-five (25) feet of a street intersection.

**3. CONVENIENCE STORE**

1. Total square footage shall not exceed three thousand (3,000) square feet.
2. A business permit shall be required. See Article 7 for specific requirements and procedures for granting of a business license.

**4. SCHOOLS. (PUBLIC, PRIVATE, PAROCHIAL UNIVERSITY OR JUNIOR COLLEGE)**

**4-3-4 MANUFACTURED MOBILE HOME PARK (MH-2)**

**A.** Authority is granted pursuant to NMSA 1978, Section 3-21A-4 as amended that reads in part: “[a] zoning agency may regulate the occupancy or location of dwelling units in such a way as to affect the reasonable regulation of mobile homes. Such regulation may exclude mobile homes from residential-use districts and restrict them to mobile home parks or mobile home subdivisions. The land on which the housing unit is placed isn’t individually owned but is part of the park as a whole.

**B. MH-2 Purpose**

1. The MH-2 Zone is intended to accommodate single or double wide manufactured mobile housing (to include “Park Model” mobile homes, “Travel Trailers” or “Recreational Vehicles”) in a park setting. These parks carry a moderate to high density area.



2. All proposed park designs shall be submitted for review and approval by the Planning and Zoning Commission.
3. All dwellings shall be connected, either temporarily or permanent to Public sewer and water supplies, when available.
4. Should sewer and water not be available, the park must have a water system approved by the State of New Mexico Engineering Department and a sewage system approved by the New Mexico Environmental Department.
5. If temporary hookups are not required, the park shall have appropriate dumping/filling stations available within the park.
6. Habitation within any single wide manufactured mobile home to include a "Park Model" mobile home, "Travel Trailer" or "Recreational Vehicle" outside a designated MH-2 park is prohibited except for an emergency; in which case, habitation shall not exceed (10) ten consecutive days in any (1) one year period.

**C. MH-2 Development Standards**

1. Before the issuance of a building permit for a park, evidence of compliance with Articles 4 through 6 shall be provided to the Planning and Zoning Commission for review and approval.
2. Any open space or park development mitigation shall be consistent with Article 5 and the City's Comprehensive Plan.

**D. MH-2 Permitted Use**

1. Single-family manufactured (mobile) homes, park models, travel trailers and recreational vehicles shall meet the specific standards as outlined in Article 4-6-5.
2. All manufactured mobile homes shall comply with New Mexico's Administrative Code for Housing and Construction of Manufactured Housing, 14.12.1 NMAC as amended.
3. Accessory structures are permitted as allowed in the R-1 zone; however, no accessory structure shall contain more square footage than the primary dwelling unit or rules of the park, whichever is more restrictive.

**4-3-5 PARKS, RECREATION AND OPEN SPACE DISTRICT (PRO)**

**A. PRO Intent**

1. The intent of the Parks, Recreation and Open Space District is to accommodate the immediate and foreseeable demand for public parks, recreation venues and open spaces in designated areas inside or outside suburban growth areas that shall serve local and regional resident's needs.
2. The size, character, and intensity of development of parks, recreation areas or open spaces shall be commensurate with the capability of land and water areas that support the intended use and shall not result in any unusual service demands.

**B. PRO Setbacks and Lot Size Requirements**

1. Minimum lot size for this district shall be 1 acre, except that 50 acres shall be the minimum parcel size for a golf course.
2. The minimum setback shall be thirty (30) feet for all uses.

**C. PRO Permissive Use examples include, but not limited to the following:**

1. PARK OR RECREATION AREA (publicly or privately owned, operated, and maintained)
2. PUBLIC CAMPGROUND OR PICNIC SITE
3. HISTORICAL, ARCHAEOLOGICAL, OR GEOLOGICAL SITE
4. PUBLIC BICYCLE AND PEDESTRIAN PATHS (not within county or public rights-of-way)
5. TRAILS SYSTEMS
6. PUBLIC PLAYGROUND OR PLAY FIELD (includes game court, ball diamond, swimming pool and similar uses)
7. GOLF COURSE (excludes miniature golf)
8. DRIVING RANGE (in conjunction with a golf course)
9. TEMPORARY STRUCTURES as may be required during construction of an authorized permanent structure.
  - a. The temporary structure shall be removed upon final inspection of the permanent structure by a certified building inspector;
10. PUBLIC FACILITIES

## 11. DRAINAGE AND GREEN BELTS

### D. Conditional Use

PRO zone conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

1. Conditional uses shall be permanent or renewable as outlined in this Code, pending review and approval by the Planning & Zoning Commission.
2. Utility facilities are permitted (e.g., structures that house support equipment for electric, gas, water, and sewer), except energy generation facilities.

### E. Prohibited Use

Use of land and water not specified in this Section are prohibited.

## 4-3-6 LIMITED RESIDENTIAL NEIGHBORHOOD RETAIL AND SERVICE (C-1)

### A. C-1 Purpose

1. The C-1 District is intended to accommodate limited retail and service establishments as a convenience to nearby residential neighborhoods.
2. Commercial businesses in this zone shall be designed to be compatible and consistent with the needs and character of the surrounding neighborhood in which it is located.
3. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.

### B. C-1 Development Standards

Follow instructions in this ordinance for rules on posting and notification. Before the issuance of a building permit, evidence of compliance with Articles 6 and 7 shall be provided to the Planning and Zoning Commission for review and approval.

1. Commercial businesses that exceed three thousand (3,000) square feet (SF) of gross floor area per business shall require a Special Use Permit.
2. A Special Use Permit shall be issued pending a public hearing and review and approval by the Commission. Before issuing a special use permit the following conditions are considered:
  - a. Size of business;
  - b. Nature of business;

- c. Adequate space for parking;
- d. Potential for traffic congestion;
- e. Noise potential;
- f. Other problems that could be detrimental to the character of the surrounding neighborhood.

**C. C-1 Permitted Uses examples include, but not limited to the following:**

1. The following uses are permitted by right to a C-1 District, provided the gross floor area does not exceed three thousand (3,000) square feet (SF).
2. Uses exceeding three thousand (3,000) square feet (SF) may be considered for approval by the City Council as a Special Use Permit pending a public hearing and review and approval by the Commission in accordance with Chapter 7 of this Code.

**3. This list is by no means exhaustive; rather, it is intended to give a “flavor” of the type uses intended for the C-1 Zone.**

- a. BAKERY, BUTCHER, MEAT OR SEAFOOD SHOP
- b. BARBER, BEAUTY, OR COSMETOLOGIST SHOP
- c. BOOKSTORE OR STATIONARY SHOP
- d. CATERING
- e. CLINICS (Dental, Medical or Chiropractic)
- f. COMMUNITY CENTER (Public or Private)
- g. CONVENIENCE STORE
- h. FOOD SERVICE (e.g., Coffee, Snack, Delicatessen or Restaurant)
- i. GENERAL BUSINESS OFFICE (e.g., Accounting, Advertising, or Professional Service)
- j. GENERAL SERVICE SHOPS (e.g., Arts and Craft; Art, Dance, Music, or similar Lessons; Bicycle Sales and Service; Dress; Dry-cleaning; Firewood Sales; Florist; Gift and Hobby; Small Appliance Repair; Knit and Yarn; Self-service Laundry; Photography, Shoe Repair; Tailoring; Video and Music)
- k. LIBRARY
- l. NEWSPAPER (to include distribution)
- m. PHARMACY
- n. PRIVATE CLUB OR LODGE
- o. REAL ESTATE

**D. C-1 Conditional Use**

C-1 zone conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either

Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

1. ESTABLISHMENT(S) WITH DRIVE-UP WINDOW
2. CHILDCARE, NURSERY OR SIMILAR USE
  - a. Play area shall be in accordance with New Mexico State Licensing requirements; enclosed by a solid wall or fence five (5) feet in height.
  - b. Adequate parking shall be provided in compliance with Article 10 of this Code.
3. CHRISTMAS TREE SALES
  - a. Lots are temporary and not be established before November 15.
  - b. Lots shall be cleaned and all unsold trees removed by December 31.
4. CHURCH
  - a. Only when located on an arterial or collector street designated on the City street plan.
5. CIGAR/CIGARETTE SHOP
6. CONSTRUCTION "LAYDOWN" YARD OR STRUCTURE (TEMPORARY)
  - a. Such yard or structure shall be removed upon completion of construction or within one (1) year from date of issued permit.
  - b. Construction yards shall be maintained in a neat, safe, and orderly manner and shall be enclosed by a fence five (5) feet in height.
  - c. No fence or wall shall be more than three (3) feet in total height above street curb level when located within twenty-five (25) feet of a street intersection.
7. FIREWORKS SALES (See City Ordinance 2014-13 for restrictions).
8. POST OFFICE
9. RETAIL SALES AND SPECIAL MERCHANDISE
  - a. Retail sales, except as otherwise stated, shall be limited to stores that specialize in a particular type of merchandise such as clothing, records, shoes, home appliances, or other similar convenience goods that serve nearby residential neighborhoods.
10. SHOPPING CENTER LESS THAN TWO (2) ACRES
  - a. Pending review and approval by the Commission of the proposed site plan and entire development.

11. STORAGE INCIDENTAL TO PRIMARY USE

- a. Storage shall be permitted only for merchandise incidental (support) to the primary use of the business.
- b. Such storage shall be totally enclosed within the building of primary use and at least ten percent (10%) of the gross floor area shall be used for retail sales or service.
- c. Open storage is prohibited.
- d. All exterior storage requires issuance of a Special Use Permit.

12. SWIMMING POOLS: PUBLIC OR PRIVATE

- a. Swimming pools are permitted only when a protective barrier five (5) feet in height is provided around the pool, pool deck, and adjoining area. Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050.
- b. Barrier here means a wall, fence, or any combination thereof to control access to the pool, pool deck, adjoining areas, and the enclosure. See Rule 7-18-2(L) NMRA.
- c. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to ensure overhead safety.
- d. Pool setbacks shall be:
  - 1) 20 feet from any front yard
  - 2) 10 feet from any street side yard
  - 3) 5 Feet from any interior side yard
  - 4) 5 feet from any rear yard
  - 5) 5 feet from any building

**E. C-1 Special Use**

C-1 zone special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

**1. AUTO WASHING ESTABLISHMENT**

**2. ANY PERMITTED BUSINESS** with a gross floor area exceeding three thousand (3,000) square feet (SF).

**3. GAS PUMPS** (accessory to a grocery or convenience store)

**3. HALFWAY HOUSE AND QUASI-INSTITUTIONAL USES**

4. HOSPITAL AND OVERNIGHT CLINIC
5. PUBLIC, EDUCATIONAL, RELIGIOUS OR PHILANTHROPIC INSTITUTION
6. PACKAGE LIQUOR
7. SCHOOL (Public, Private, or Parochial)
8. SHOPPING CENTER (limited to a maximum of five (5) acres)

#### **4-3-7 COMMUNITY COMMERCIAL AND RETAIL USE (C-2)**

##### **A. C-2 Purpose**

1. The C-2 District is intended to accommodate certain commercial/retail uses which serve both transient and local trade.
2. This district is intended for areas surrounding major arterial or collector streets where a wide range of automotive related service facilities, convenience goods and personal services are desirable and appropriate for this land use.
3. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.

##### **B. C-2 Development Standards (Special Use Permit)**

Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification. Before the issuance of a building permit, evidence of compliance with Articles 6 and 7 shall be provided to the Planning and Zoning Commission for review and approval.

### C. C-2 Permitted Uses

All Permitted Uses in Zone C-1 are also Permitted Use in Zone C-2:

1. Animal Hospital & Clinic
2. Apartments
3. Automobile Parking Lot
4. Banks & Financial Institutions
5. Boat Storage, Sales & Service
6. Building Contractor (office only)
7. Christmas Tree Sales
8. Church
9. Clothing & Apparel Shop
10. Columbarium (Urn storage)
11. Convention or Exhibition Hall
12. Dance Hall or Music Academy
13. Department Shop
14. Electrical Shop & Electricians
15. Fast Food & Drive-ins
16. Frozen Food Locker
17. Funeral Home or Mortuary
18. Furniture & Home Furnishing
19. Gas Stations
20. Glass Cutting & Finishing
21. Gymnasium
22. Hospital or Overnight Clinic
23. Hotel or Motel
24. Home Appliance Sales & Service
25. Home Appliance Repair
26. Insurance Services
27. Institutions (Public/Quasi-Public)
28. Jewelry, Light Manufacturing
29. Jewelry Store
30. Laboratory (Medical, Dental, Research or Engineering)
31. Law Office
32. Lessons (art, music, dance, etc.)
33. Liquor Store (Tavern/Package)
34. Lumber & Construction
35. Medical Center
36. Microwave Radio Relay Structure
37. Motion Picture Theater
38. Motorcycle Sales & Service
39. Newspaper production / distribution
40. Nursing, Convalescent or Retirement Home
41. Paint Sales
42. Parking Garage
43. Private Club or Lodge
44. Pet Shop or Grooming
45. Pharmacy
46. Photographic Studio
47. Physician's Office
48. Playground & Recreation
49. Pool & Billiard Room
50. Printing & Publishing
51. Radio & Television Broadcast Studio
52. Recycling Center
53. Retail Sales
54. Roofing & Sheet Metal Shop (office only)
55. Show & Sales Room for Business Products
56. Skating Rink
57. Spa
58. Sporting Goods Store
59. Steam Cleaning Establishment
60. Tailoring
61. Taverns & Cocktail Lounges
62. Tire Sales & Services
63. Title & Abstracting Services
64. Travel Agency
65. Upholstery Shop
66. Variety Store
67. Warehouse & Store
68. Watch & Clock Sales & Service



#### **D. C-2 Conditional Use**

C-2 zone conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

- 1. Amusement Park or Enterprise:** Subject to any other provisions and requirements of the Municipal Code. Temporary amusement enterprises are prohibited within three hundred (300) feet of any residential zoning district. Permanent amusement enterprises are prohibited within five hundred (500) feet of any residential zoning district.
- 2. Automobile Washing Establishment:** Subject to approval of site and related plans provided for each stall.
- 3. Bank Drive-up Windows:** Stacking lane(s) of length for maximum projected traffic with a width of twelve (12) feet for each drive-up must be provided and designed to ensure that no bank traffic backs onto the street giving access. Banks must be located on a collector or arterial street as shown on the City Street Plan.
- 4. Bowling Alley:** Subject to approval of site and related plans. Bowling Alleys are prohibited within three hundred (300) feet of any residential zoning district.
- 5. Brewery/Winery**
- 6. Child Care Center, Nursery or Similar Use:** Play areas shall be in accord with state licensing requirements and enclosure by a solid wall or fence five (5) feet in height.
- 7. Church:** Only when located on an arterial or collector street as designed on the City Street Plan.
- 8. Drive-In Theater:** Subject to approval of site and related plans.
- 9. Fireworks Sales** (See City Ordinance 2014-13 for restrictions).
- 10. Firewood Sales:** No more than five (5) cords stored on site.

11. **Furniture assembly (Accessory Use):** Permitted only as an incidental or accessory use to retail sales. Maximum floor area for assembly shall not exceed three thousand (3,000) square feet, not exceed thirty percent (30%) of the total gross floor area. Welding permitted only in conjunction with repair and shall not be used for the purpose of heavy equipment assembly. Fire Department approval is required for Welding.
12. **Miniature Golf Course:** Subject to approval of site and related plans. Not permitted within one hundred (100) feet of any residential district.
13. **Mini Storage Units:** Units shall not be used for commercial sales of products, merchandise, service or repair.
14. **School, Public, Private or Trade:** Sites shall be located on an arterial or collector street as shown on the City Street Plan.
15. **Shopping Center:** Providing site, drainage and related plans for the entire development approved.
16. **Swimming Pools:** Permitted only when a protective fence or barrier five (5) feet in height is provided around the yard, lot or pool area. See Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050. Approval from all utilities is required to ensure overhead safety.
17. **Welding (Accessory Use):** Welding shall be permitted only as an incidental or accessory use necessary for the repair of vehicles or equipment permitted in the C-2 zone. Welding uses shall be approved by the Fire Department and shall be in accord with any other provisions of the Municipal Code.

**E. C-2 Special Use**

C-2 special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

1. Apartments (10 unit maximum) & Townhouses (R-2 Zone development standards apply)

#### **4-3-8 HEAVY COMMUNITY COMMERCIAL AND RETAIL USE (C-3)**

##### **A. C-3 Purpose**

1. The C-3 Zone shall provide for the development of commercial services designed to serve community wide needs.
2. Accordingly, the C-3 heavy commercial district is intended for the conduct of business activity that is located at the edge of residential areas but serves a larger trade area than the immediately surrounding residential neighborhoods.
3. The C-3 heavy commercial district shall provide more intensive retail trade and commercial services, such as the outside sales of vehicles, motorcycles, boats, recreational vehicles or heavy and light machinery.
4. Such areas shall provide for uses that, because of size, operating characteristics or need for major street accessibility may not be suitable in the central business district or local commercial areas.
5. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.

##### **B. C-3 Development Standards (Special Use Permit)**

Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification. Before the issuance of a building permit, evidence of compliance with Articles 6 and 7 shall be provided to the Planning and Zoning Commission for review and approval.

1. A General Development Plan shall be submitted for review and approval by the Planning and Zoning Commission before any development within the Heavy Community Commercial area.
2. Provisions of this zone shall ensure compatibility of design with any adjacent residential development.

##### **C. C-3 Permitted Use examples include, but not limited to the following:**

1. Permitted uses in the C-3 commercial district (store, shop, or facilities) for the conduct of a retail business or service similar in use and nature to the types of uses listed herein and specifically exempting those types of activities provided for in less restricted districts.

2. All C-3 Permitted Use businesses shall comply with all federal, state and local regulatory agencies and their policies and shall be approved by the Fire Department. All permitted uses listed under C-1 & C-2 zones, except nursery or childcare facility are Permitted Uses under C-3.

3. Permitted C-3 businesses are:

All Permitted Uses in Zone C-1 & C-2 are also Permitted Use in Zone C-3

1. Apartments
2. Auditoriums
3. Auto & Camper Sales, Service and Repair
4. Automotive Equipment and Rental
5. Automobile Body & Repair Shop (Not permitted within one hundred (100) feet of any residential zone)
6. Bus or Motor Freight Terminals (Only when located on an arterial street or highway as designated on the City Street Plan)
7. Construction or Contractors Yard (Yard shall be maintained in a neat and orderly fashion and enclosed by a fence at least six (6) feet in height except that the height shall be limited to three (3) feet above the street-curb within twenty-five (25) feet of a street intersection)
8. Drive-in Theater
9. Dry Cleaning & Steam Cleaning Facility
10. Farm & Ranch Products & Supplies
11. Firewood sales (more than 5 cords on site)
12. Heavy Equipment Repair & Service
13. Insulation Shop
14. Kennel (Commercial)
15. Landscaping Material Sales
16. Plumbing and Heating Shop
17. Roofing and Sheet Metal Shops
18. Smoke Shop
19. Taxicab Transportation
20. Welding: Welding shall be permitted in the C-3 zone. Welding uses shall be approved by the Fire Department and shall be in accord with any other provisions of the Municipal Code.

**D. C-3 Conditional Use**

C-3 conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

1. Conditional use for those businesses that are similar in character, scale and performance or with similar noise, odor, traffic, air and water quality impacts on neighboring properties.
2. All C-3 Conditional Use businesses shall comply with all federal, state and local regulatory agencies and their policies and shall be approved by the Fire Department.
3. The following C-3 uses are permitted in accordance with stated conditions and upon approval by the Commission:
  - a. **Adult Entertainment Use:** Uses such as adult bookstores, adult movie theaters, adult magazine racks (no public display of adult pictures or materials that are visible outside the building is permitted) and other adult entertainment as defined in Article 4-19-2 of this Code shall be permitted provided such use is located at least three-hundred (300) feet from a property line of any:
    - 1) School; or
    - 2) Church; or
    - 3) Public park or recreation facility; or
    - 4) Residential zoning district.

**E. C-3 Special Use**

C-3 special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

1. **Body Art/Modification Establishment:** Uses include but not limited to tattoo shop or parlor, scarification shop or parlor and body piercing shop or parlor.
  - a. Prior to receiving initial and annual renewal of business license for a Body Art/Modification Establishment, each business owner must provide evidence to the Planning and Zoning Commission that the body art establishment successfully passed a state inspection pursuant to the Body Art Safe Practices Act during the preceding calendar year.
  - b. In the event that the body art establishment has not been inspected by the state through no fault of the business owner, the owner may apply to the City for a thirty (30) day extension of time allowing the business to operate temporarily until an inspection can be performed.

- c. If the body art establishment fails to successfully pass a state board inspection, the body art establishment shall suspend body art activities until it passes a re-inspection.
- d. Administering body art on any person eighteen (18) years of age or under is prohibited.
- e. Proof of age will be shown by a government-issued photo identification accompanied by at least one other government-issued document showing proof of age, such as a birth certificate.

**2. FABRICATION SHOP**

**3. STORAGE OF PRODUCTS** (e.g. Merchandise, Domestic Goods, or Raw Materials)

**4. WAREHOUSING OR WHOLESALE DISTRIBUTION OF GOODS, METAL WORKS OR MACHINE PRODUCTS**

**4-3-9 BUSINESS MANUFACTURING DEVELOPMENT ZONE (B-M)**

A. B-M Zone Purpose

- 1. The Business-Manufacturing zone is designed to be a buffer zone between the intense commercial uses found in the C-3 zoning district and the more industrial and potentially more objectionable uses of the I-3 zoning district.
- 2. The Business-Manufacturing zone is intended to accommodate a wide variety of light manufacturing, assembly, commercial processing, storage, packaging, compounding and wholesaling as well as distribution operations with limitations on size and intensity.
- 3. Such areas shall provide for uses that, because of size, operating characteristics or need for major street accessibility may not be suitable in the central business district or local commercial areas.
- 4. Such uses shall be conducted to ensure that there is no toxic/hazardous releases, excessive noise, vibration, smoke, dust or any particulate matter,

traffic, humidity, heat or glare, at or beyond any lot line of the parcel on which it is located.

5. Residential uses shall be prohibited except for a resident watchman, caretaker or proprietor of a Business-Manufacturing use.
  6. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.
  7. All uses shall comply with all federal and state regulatory agencies and be approved by the City of Rio Communities Fire Marshall or designated person.
- B. B-M Zone Development Standards are provided in Article 4 of this Code. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification. Before the issuance of a building permit, evidence of compliance with Articles 6 and 7 shall be provided to the Planning and Zoning Commission for review and approval.
- C. B-M Zone Permitted Uses ~~examples~~ include, ~~but are not limited to~~ the following:
1. All permitted uses in C-1 Development Zone
  2. All permitted uses in C-2 Development Zone
  3. All permitted uses in C-3 Development Zone
  4. Commercial or Trade School
  5. Concrete Sales and Ready Mix (Under 5 Yards)
  6. Electrical or Mechanical Part & Equipment Assembly
  7. Fabrication Shops
  8. Freight Warehouse & Dock
  9. Mining & Mineral Excavation--Office Only
  10. Packing of Food, Cosmetics, Pharmaceuticals, or Toiletry Products
  11. Processing and Compounding of Bakery Goods, Candy or Food Products

12. Warehousing or wholesale Distribution of Goods, Metal Works, or Machine Products
13. Rail Spur Usage for transport, storage for pending shipments, and delivery of product to manufacturing facilities
14. Manufacturing of Mobile Homes
15. Manufacturing of pre-made building/house walls and roofs
16. Manufacturing of tools
17. Manufacturing of Electronic Instruments
18. Manufacturing of electrical *devices*
19. Manufacturing of Consumer Goods not otherwise prohibited by this ordinance (e.g., Appliances, Furniture, Garments, Engine Blocks, etc.)
20. Distribution Terminals
21. Government Facilities and Offices
22. TV & Radio Broadcasting Facilities
23. Wholesale Businesses
24. Hotel/Motel
25. Mortuary/Funeral Home/Cemetery
26. Farm Implement Sales and Repair
27. Amusement Enterprises
28. Temporary Stands (60 Day Temporary)
29. Food Packaging
30. Winery - all aspects of manufacturing/sales/warehousing
31. Wholesale Nursery
32. Veterinary Hospital



33. Municipal Water Supply/Treatment

34. Fruit/Vegetable/Nut processing & packaging/warehousing/refrigeration

**D. B-M Zone Conditional Uses**

1. All conditional uses in C-1 Development Zone unless considered a permitted use in B-M Development Zone
2. All conditional uses in C-2 Development Zone unless considered a permitted use in B-M Development Zone
3. All conditional uses in C-3 Development Zone unless considered a permitted use in B-M Development Zone

**E. B-M Zone Special Uses**

**4-3-10 HEAVY INDUSTRIAL (I-3)**

**A. I-3 Purpose**

1. I-3 Zoning is only **allowable on and** applicable to properties annexed into the City after the effective date of this ordinance.
2. An I-3 District is intended to accommodate a wide variety of heavy manufacturing, commercial, processing, storage, packaging, compounding and wholesaling and distribution operations with no limit on size.
3. Such uses shall be constructed and operated to ensure that there is no excessive noise, vibration, smoke, dust or any particulate matter, toxin or noxious matter, humidity, heat or glare, at or beyond any lot line of the parcel on which it is located.
4. Excessive is defined as a degree exceeding that which causes in the customary manner of operation by users permitted in the I-3 District, a degree injurious to the public health, safety, welfare or to a degree in which it is a nuisance by reason of excessiveness.
5. Residential uses shall be prohibited except for a resident watchman, caretaker or proprietor of a commercial use.

6. State of New Mexico Engineer approval of water well and New Mexico Environmental Department approval of sewage treatment must be obtained, if not connected to public sewage and water.
7. All uses shall comply with all federal and state regulatory agencies and be approved by the City of Rio Communities Fire Marshall or designated person.

**B. I-3 Development Standards** are provided in Article 4-6-4 of this Code.

**C. I-3 Permitted Uses**

7. All Permitted Uses in B-M Zone
8. Community or Municipal Water Supply System
9. Heavy Manufacturing and similar Uses in Character, Scale, and Performance THAT MEET CITY DEVELOPMENT STANDARDS FOR Odor, Noise, Water, and/or Traffic Impacts on Neighboring Properties
10. Hot Mix Plant (Temporary)
11. Manufacturing of Clay Products, Brick, Tile and Cement
12. Meat Packing Plant (No Slaughtering or Rendering)
13. Wood Pellet Manufacturing (for Wood Stoves)
14. Commercial Sand, Gravel, or Concrete Sales under Five (5) Yards per Load, with Weight Limit on Gross Vehicle Weight (should this be a permitted use?)
15. Public Facilities
16. Similar uses in character, scale and performance with similar odor, noise, air, water and traffic impacts on neighboring properties

**D. I-3 Conditional Use**

I-3 conditional use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 for specific conditions and provisions related to Conditional Use. Examples of Conditional Use are:

1. **Auto Wrecking Yard:** (MUST HAVE EXTERIOR FENCING TO SCREEN FROM PUBLIC VIEW)
2. **Paint shop:** Mixing, treatment and spraying. Building shall be located one-hundred (100) feet from any residential zoning district and shall have Fire Department Approval.

3. **Commercial Sand, Gravel, or Concrete Sales** under Five (5) Yards per Load, with Weight Limit on Gross Vehicle Weight

**E. I-3 Special Use**

I-3 special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning **open public forum** or City Council hearings. See Article 4-7-4 for specific conditions and provisions related to Special Use. Examples of Special Use are:

1. Asphalt material production plant. **Provided, this is a temporary use not to exceed 90 days.**
2. Commercial sand, gravel, or concrete plant (temporary, not to exceed 90 days)
3. **Correctional facilities or institutions**
4. **Facilities for production or production of oil, natural gas, geothermal resources or other hydrocarbons.**
5. Manufacture of forest products, including sawmills, planing mills, plywood and particle board – no pulp or paper mills
6. Metal or other used/scrap materials (sales, recycling, or purchase)
7. Racetracks (all motorized vehicles)

**F. I-3 Prohibited Uses; Uses not permitted in an I-3 Zone**

**4-3-11 PLANNED DEVELOPMENT DISTRICT (PD)**

**A. Description**

A Planned Development contains parcels or groups of parcels that may be platted or un-platted, have “planned development strategies” on record or have some utilities, but remain, for the most part, blank slates. For a community searching for vision, a Planned Development presents an opportunity for unique and boundless growth.

**B. Purpose**

The purpose of the Planned Development District is to promote flexibility in thought that encourages innovative development sensitive to surrounding land

uses, community needs and the natural environment. As necessary, a viable Planned Development should consider and propose:

1. A variety of choices working and living environments;
2. Open spaces and recreation areas;
1. A pattern of development that preserves natural vegetation, natural topography and geologic features that prevents soil erosion;
2. A creative approach to land use and physical development;
3. The use alternative energy sources;
4. An environment of stable character in harmony with surrounding development.
5. New or innovative concepts in land use not permitted by other zoning districts.
6. Combine commercial and residential land uses.

## **ARTICLE 4    OVERLAY ZONES**

### **4-4-1    PURPOSE**

### **4-4-2    FLOOD OVERLAY ZONE**

### **4-4-3    SCHOOL OVERLAY ZONE**

### **4-4-4    CELL TOWER COMMUNICATIONS OVERLAY ZONE**

### **4-4-5    SOLAR COLLECTOR OVERLAY ZONE**

#### 4-4-6 DRAINAGE OVERLAY ZONE

##### 4-4-1 PURPOSE

The purpose of Overlay Zones is to provide direction for areas that may have restricted or partial uses. Parcels in one of these zones may require specially defined actions in order to fully utilize the land. These zones are also created to allow special uses that are either not allowed elsewhere or the owner of the parcel must petition the Commission and/or City Council for permission to allow “Conditional Use” or “Special Use” of the land. The provision of one of these zones is in addition to those contained in the basic zone that the parcel is coded. Where provisions of these special zones may conflict with the provisions of another zone, the provisions of the overlay zone shall prevail. All conditional or special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 or 4-7-4 for specific conditions and provisions related to Conditional or Special Use.

##### 4-4-2 FLOOD OVERLAY ZONE

- A. **Intent:** The Flood Overlay Zone provides special regulations designed to reduce flood damage to property and risk to human life.
- B. **Boundaries:** The boundaries of the flood hazard overlay district shall be determined by the most recent Flood Insurance Rate Map maintained by FEMA and the Valencia County Floodplain Manager. All boundaries of this overlay zone shall substantially conform to the designated flood hazard areas identified under the National Flood Insurance Program.
- C. **Permits:** In addition to review by the Planning and Zoning Commission, a review must be undertaken by the Valencia Flood Plain Manager. This review may also include a development as may be specified by any existing or subsequent flood damage protection ordinances of the City of Rio Communities.

##### 4-4-3 SCHOOL OVERLAY ZONE

- A. **Intent:** The School Overlay Zone provides special protection for all areas directly adjacent to schools. It is designed to enhance safety to children, educators and parents, and reduce traffic during school transport times. Businesses or residents in

areas that are directly adjacent to schools shall not be of a type that poses any increased risk to safety or the educational experience.

- B. Boundaries:** The boundaries of this zone are three hundred (300) feet from the border of school property.
- C. Permits:** Because of this potential increased risk, all uses in this zone shall be “Conditional Use” or “Special Use” and must be approved by the Planning and Zoning Commission.
- D. Guidelines:** The following guidelines shall apply for approved property use falling within this zone:
  - 1. The use of any residential property reverts to R-1 uses.
  - 2. The use of any commercial property reverts to C-1 uses.
- E.** The rules for Special or Conditional uses follow the guidelines for C-1 property. This change in intended Use only applies to that portion of the property falling in the School Overlay Zone.

#### **4-4-4 CELL TOWER COMMUNICATIONS OVERLAY ZONE**

- A. Intent:** This overlay zone is established to restrict certain structures as permissible use and to provide safe access for installation. In all instances, an applicant for a permit shall exhaust all co-location opportunities by negotiating directly with respective owner(s) of a parcel and shall follow the guidelines set forth in Article 4 of this Code.
- B. Setbacks:** Minimum setbacks for any tower to adjacent structures, highways or streets shall be equivalent to the height of the tower. The size of each zone shall be 1,000 feet in diameter. Towers must be a minimum of 500 feet from any existing residential area.
- C. Permits:** Special or Conditional Use Building Permit is required.
- D. Restrictions:** Cell towers shall not be erected in any residential zone.

#### **4-4-5 SOLAR COLLECTORS OVERLAY ZONE**

- A. Intent:** The intent of these zones are to provide suggested areas for the installation of large-scale solar arrays (regulation of small residential solar collection systems is found in Article 17). Areas conducive to solar arrays are characterized by natural

terrain that provides easy access for installation; requiring minimal screening from view by City residents. Installation in other areas is permissible but may require additional scrutiny for screening and impact on surrounding areas.

- B. Boundaries:** Lying along the far southerly boundaries of the City, these zones extend 1,000 feet into the City. This 1,000-foot limit may be extended pending agreement from private owners of parcels selected for use.
- C. Permits:** A Special or Conditional Use Building Permit request is required for this use.

#### **4-4-6 DRAINAGE OVERLAY ZONE**

##### **A. Intent**

The regulations, restrictions and requirements of this section are intended to preserve the quality of life, mitigate the effects from flood and other dangers and conserve and stabilize the value of property. Accordingly, the preservation of natural drainage arroyos and ditches are of prime concern to prevent downstream flooding and resulting damage to property.

##### **B. Boundaries**

The boundary of this overlay zone is twenty-five (25) feet or more on each side of a defined drainage area. For any proposed structure within a defined drainage area, the petitioner shall include to the Commission for review and approval:

1. A comprehensive drainage and grading plan stamped and signed by a professional engineer, registered and licensed to practice in New Mexico.
2. All plans should be engineered to provide drainage for one hundred percent (100%) of storm water generated by a one hundred (100) year flood produced from a twenty-four (24) hour storm.

##### **C. Permits**

A. conditional use or Special Use permit shall be required for all proposed construction within an identified overlay drainage area, pending review and approval of the Commission. Drainage overlay conditional or special use requires a public hearing and approval of the City Council after a recommendation by the Planning and Zoning Commission. Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification for either Planning and Zoning or City Council hearings. See Article 4-7-2 or 4-7-4 for specific conditions and provisions related to Conditional or Special Use. A drainage grading plan shall be submitted with the request for building permit to prevent delay of the approval process.

**D. Restrictions**

No storm water shall be allowed to enter an arroyo or ditch that is a result of run-off created from any new construction. Storm water retention ponds are authorized as needed to obtain these results, however, no more than fifty percent (50%) of a front setback may be used for these retention ponds.

**ARTICLE 5 REQUIREMENTS FOR ACCESSORY BUILDINGS**

- 4-5-1 DEFINITION OF ACCESSORY BUILDING**
- 4-5-2 USE OF ACCESSORY BUILDING**
- 4-5-3 ACCESSORY BUILDING**
- 4-5-4 CARPORTS**
- 4-5-5 WATER RUN-OFF (DRAINAGE)**



**4-5-1 DEFINITION OF ACCESSORY BUILDING**

An accessory building is any stand-alone structure subordinate to and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and that is not attached by any part of a common wall or common roof to the main building. Includes containers, portable garages, carports, storage buildings and temporary type moving units (up to 90 days-may be extended upon review by Commission) .

**4-5-2 USE OF ACCESSORY BUILDINGS**

- A. No accessory building shall be used as a place to conduct any business or for habitation or dwelling.
- B. No accessory building shall be located in the front yard of any residential yard.

**4-5-3 ACCESSORY BUILDING**

These structures are subject to the following:

- A. The total height of any accessory building shall not exceed twenty (20) feet from ground level (measured from the lowest point of the structure to the highest point).
- B. Any accessory building shall not occupy (in total square footage) more than twenty-five (25) per cent of the rear yard area in which it is located.
- C. Any accessory building shall be at least ten (10) feet from the main structure or three (3) feet, if covered on side adjacent to the main structure by a 2-hour fire rated material. A transport permit is required for all accessory buildings built off-site to confirm approved placement on the lot. See 4-7-8.
- D. Any accessory building shall comply with all setbacks. See Articles 6 and 9 of this Code.
- E. A building permit is required for any accessory building that exceeds 120 sq. ft., regardless of foundation. Contact Rio Communities City Clerk for the application.

**4-5-4 CARPORTS (STAND-ALONE)**

- A. Carports are permitted in the front yard setbacks of R-1, R-2, MH-1, MH-2, C-1, C-2, C-3, I-1/I-2 and I-3 Districts and shall not:
  - 1. Be situated that infringes on any established setback, and
  - 2. Reduce available or established parking space, and

3. Interfere with a clear line of sight throughout the neighborhood, and
  4. Be incompatible with the architecture and aesthetic appearance of the adjacent block as determined by the Planning and Zoning Commission.
  5. Have an area greater than fifteen percent (15%) of the front yard setback, or
  6. Exceed seven-hundred and fifty (750) square feet in area, and
  7. Be enclosed with three (3) or more opaque walls, or where seventy-five percent (75%) of the interior space is open, and
  8. The total height of any carport shall not exceed twenty (20) feet from ground level (measured from the lowest point of the structure to the highest point).
  9. Be used for storage on more than one (1) wall of the structure.
- B.** Any carport directly attached to the main dwelling structure requires a building permit. It requires review and approval of the Commission. It shall conform to the architecture and aesthetics of the main dwelling and shall meet structural standards as outlined in Construction Industries General Provisions, Chapter 5 of the New Mexico Administrative Code.
- C.** All carports must adhere to front, side and rear setbacks. It must also adhere to all accessory building rules.

**4-5-5 WATER RUN-OFF (DRAINAGE)**

Accessory Building structures shall not generate water run off onto adjacent property. The installation of side gutters or drainage channels may be necessary to keep such run-off from running onto adjacent property.

**ARTICLE 6 STANDARDS FOR DEVELOPMENT**

**4-6-1 GENERAL STANDARDS FOR DEVELOPMENT**

**4-6-2 ZONING STANDARDS**

**4-6-3 RESIDENTIAL ZONES, EXCEPTIONS AND PROVISIONS**

**4-6-4 COMMERCIAL AND LIGHT INDUSTRY, EXCEPTIONS AND PROVISIONS**

**4-6-5 MOBILE HOME SUBDIVISIONS AND PARKS, PROVISIONS AND EXCEPTIONS**

- 4-6-6 DEVELOPMENT IN FLOOD PLAIN AREAS
- 4-6-7 HEIGHT EXCEPTIONS
- 4-6-8 LANDSCAPING AND EROSION CONTROL
- 4-6-9 GRADING, DRAINAGE AND SITE PLANS

**4-6-1 GENERAL STANDARDS FOR DEVELOPMENT**

**A. Purpose**

All structures, buildings, lots and tracts that fall within the City boundaries shall be developed as described in this Article and any related Article of this Code. All the development standards within this Code shall apply to any tract, lot or parcel independent of any other tracts, lots or parcels.

**4-6-2 ZONING STANDARD**

**A. Standard Setbacks**

Zone Type	Minimum Front Offset	Minimum Rear Offset	Minimum Side Offset
R-1 *	<u>20</u> -feet	10-feet	<u>5</u> -feet
R-2 *	<u>20</u> -feet	<u>10</u> -feet	0 to 5-feet
MH-1	<u>20</u> -feet	<u>10</u> -feet	10-feet
MH-2	See Manufactured Home Standards		
C-1	<u>20</u> -feet	<u>10</u> -feet	0 to 5-feet
C-2 and C-3	<u>20</u> -feet	<u>15</u> -feet	0 to 5-feet
B-M and I-3	<u>20</u> -feet	<u>15</u> -feet	0 to 5-feet
<b>I-1/I-2 &amp; I-3</b>	Requires Planning & Zoning Approval		

**Table 1**

\*\* For infill lots in existing neighborhoods, the setback should be equal to or more than the houses on that block.

**B. Lot Sizes**

Zone Type	Minimum Lot Area (SF)	Minimum Lot Width (FT)	Maximum Building Height (FT)
R-1: Single Family	<u>6,000</u>	<u>60</u>	30

<b>Placeholder</b>			
<b>R-2: High Density/ Multi-Family</b>	<u>3,500</u>	<u>45</u>	<u>30</u>
<b>C-1</b>	5,000	50	35
<b>C-2</b>	5,000	60	40
<b>C-3</b>	5,000	60	50
<b>I-1/I-2 B-M</b>	130,680 (3 acres)	80	80
<b>I-3</b>	130,680 (3 acres)	80	100

**Table 2**

**Note:** Minimum of five (5) units or more, Environmental Department minimum lot requirements shall apply, if lot is not served by municipal sewage collection system.

- C. Open or Exterior Storage and Display:** Merchandise, material storage or display of materials on the exterior of a building shall be enclosed by a fence or wall of solid construction, no less than six (6) feet in height, except for mobile homes, cars, trucks or motorcycles.

**D. Buffer Zone: This is a clear area between the boundary of a Planned Development Zone and land in zones identified below that is free of permanent buildings or outside storage.**

<u>Zone</u>	<u>Minimum Buffer</u>
C-1	25 FT
C-2	50 FT
C-3	100 FT
B-M	300 FT
I-3	300 FT

**Table 3**

### 4-6-3 RESIDENTIAL ZONES (R-1 AND R-2), EXCEPTIONS AND PROVISIONS

#### A. Exceptions to Setbacks

A zero (0) setback in an R-2 zone shall comply with the following provisions:

1. Not less than five (5) feet, including roof overhang between structures shall be allowed, except for approved multi-family/high density structures with a common wall. Non-common wall side shall have a minimum of five (5) feet setback.
2. Planning and Zoning Commission shall approve all setback exceptions as part of an approved development.
3. An addition to a main dwelling shall be permitted as an extension of existing building lines that have non-conforming setbacks.
4. Setbacks for any addition shall be the same as the main building.
5. A minimum setback of seven and one-half feet (7' 6") for a two or three story building shall be enforced.
6. The minimum setback distance shall be maintained for both front yards of a corner lot. A lesser setback for one front yard of a triple frontage lot shall be considered for a variance by the Commission.
7. Any new dwellings may be erected as close to the front property line as the average distance established by existing dwellings on that side of the block, assuming the lots on that side are fifty (50) percent or more developed.

#### B. Front Yard Parking

1. Front yard parking is permitted, provided the area shall occupy not more than one-third (1/3) of any open area between the front property line and the front of the dwelling.
2. Homes located on a cul-de-sac may reserve two-thirds (2/3) of a front yard for parking.
3. Where lots are less than fifty (50) feet in width, a twenty (20) foot wide parking area is permitted.
4. Any parking area within an R-2 Zone shall not cover more than three fourths (3/4) of the front yard.

**C. Minimum Distance Between Structures**

There shall be no less than ten (10) feet between structures or buildings located on the same tract, lot or parcel or three (3) feet, if covered on side adjacent to another structure by a 2-hour fire rated material.

**D. Easement Encroachments**

There shall be no temporary or permanent structures placed on any easement without written approval by the Commission.

**4-6-4 COMMERCIAL (C-1, C-2 & C-3) AND INDUSTRIAL (I-3) ZONES - EXCEPTIONS AND PROVISIONS**

**A.** All development in any commercial or light industrial zone shall comply with the following provisions:

1. A minimum setback of seven and one-half feet (7'-6") for any building of thirty (30) feet or more in height.
2. A zero (0) foot side yard shall only be permitted when:
  - a. Both buildings share a common wall on the side property line; or
  - b. A building on the non-abutting side is at least five (5) feet from the property line; or
  - c. When abutting property is undeveloped, otherwise a five (5) foot setback shall be required.
3. There shall be a minimum setback of one (1) foot for each foot in height of any building abutting a residential zoning district. There shall be at least a minimum distance of thirty (30) feet maintained between any residential dwelling and commercial or industrial structure.

**B. Minimum distance between structures**

There shall be a minimum space of ten (10) feet between any structure or building that is located on the same lot, parcel or tract.

**C. Private Streets**

All private streets or drives (whether paved or unpaved) shall be a minimum of twenty-four (24) feet wide.

**4-6-5 MOBILE HOME SUBDIVISIONS (MH-1) AND PARKS (MH-2) PROVISIONS AND EXCEPTIONS**

**A. Development Standards**

<b>Zone Type</b>	<b>Minimum Development Area (Acres)</b>	<b>Minimum Space per Unit (SF)</b>	<b>Maximum Units per Acre</b>	<b>Maximum Building Height (FT)</b>
<b>MH-1</b>	5	6,000	7	26
<b>MH-2</b>	2	3,000	10	26

**Table 4**

**B. Lot Spacing**

<b>Zone Type</b>	<b>Minimum Width Each Lot (FT)</b>	<b>Minimum Distance Between Units (FT)</b>	<b>Minimum Distance to Main Building (FT)</b>	<b>Minimum Distance to Accessory Building (FT)</b>
<b>MH-1</b>	50	20	20	10
<b>MH-2</b>	35	10	15	10

**Table 5**

**C. Lot Setbacks**

<b>Zone Type</b>	<b>Minimum Front Yard Depth (FT)</b>	<b>Minimum Rear Yard Depth (FT)</b>	<b>Minimum Side Yard Width (FT)</b>
<b>MH-1</b>	20	10	10
<b>MH-2</b>	15	NA	5

**Table 6**

**D. Storage Units**

One storage unit or accessory building up to six hundred (600) square feet (SF) in area is permitted and may be located within an established setback.

**E. Mobile Home Park**

Permissible dwelling within a Mobile Home Park shall be limited to mobile homes, park models, recreational vehicles and travel trailers and additional support facilities.

**F. Private Streets**

1. All private drives located within any Mobile Home Subdivision or Mobile Home Park shall be a minimum of twenty-four (24) feet wide.

2. Any streets or drive shall be either dirt and gravel mix, asphalt, concrete or other appropriate material as approved by the Commission.

**G. Easement Encroachments**

Space allotted for any mobile home or recreational vehicle or other structures shall not be placed within any established easement without the written approval of the Commission.

**4-6-6 DEVELOPMENT IN FLOOD PLAIN AREAS**

All development in an established Flood Plain Area, as determined by the Federal Emergency Management Agency's (FEMA) Flood Plain Area Map, shall be in accordance with Rio Communities Planning and Zoning Article 4-6-9 and any restrictions enacted by the City.

**4-6-7 HEIGHT EXCEPTIONS**

A. Any "homemade" residential radio or television antenna or other free-standing tower is prohibited. Only a radio, television antenna or tower designed and provided by a certified manufacturer shall be permitted.

B. All residential radio, television antennas or towers and any other free standing tower shall meet all manufacture's specifications and be expressly designed and capable to withstand 90 M.P.H. wind speeds.

C. All antennas, towers, belfries, spires and similar structures shall not exceed ten (10) feet above the ridgeline of any dwelling within a three hundred (300) foot radius.

**4-6-8 LANDSCAPING AND EROSION CONTROL**



- A. Standards for Landscaping as stated in Article 11 shall apply for all zones.
- B. For any development outside the Scope of Article 11, the properties shall be maintained in a natural vegetation state (see Definition Section) or, if disturbed, shall be maintained in a manner that conserves water.
- C. Such properties must be kept in a clean state that shall also control water and wind erosion. Planting native grasses is recommended as an alternative.

**4-6-9 GRADING, DRAINAGE AND SITE PLANS**

- A. All developments over 1 acre in size or, as otherwise stated in this Code, shall specifically address grading and drainage on their site plans.
- B. A registered civil engineer may be requested to address these issues on the site plan. The City may require retention of any drainage water on site through the Planning and Zoning Commission.

**ARTICLE 7 PERMITS, CERTIFICATES AND FEES**

- 4-7-1 CERTIFICATE OF ZONING COMPLIANCE**
- 4-7-2 CONDITIONAL USE PERMIT**
- 4-7-3 VARIANCE USE PERMIT**
- 4-7-4 SPECIAL USE PERMIT**
- 4-7-5 HOME OCCUPATION PERMIT**
- 4-7-6 BUILDING PERMITS REVIEW**
- 4-7-7 FEE SCHEDULES**

**4-7-1 CERTIFICATE OF ZONING COMPLIANCE**

- A. No new building or land use shall be used or occupied, nor may a use of a building or land be converted or changed, in whole or in part, until a certificate of zoning compliance is issued by the City. A certificate of zoning compliance shall be issued only if the proposed use of a building or property is permitted by right within the zone wherein the use is proposed to occur.
- B. **Application Requirement:** The application for a certificate of zoning compliance shall be on the form supplied by the City and shall contain plans and other

information as required by the City as well as additional information as may be required elsewhere in this Code.

- C. **Expiration:** If within thirty (30) days after issuance of a certificate, work has not commenced or work preparatory to use has not commenced, the certificate shall expire by limitation.
- D. **Revocation of Certificate:** The Commission or City may revoke a certificate issued under this Code if it is determined a false statement or misrepresentation of material fact was provided by the applicant as a part of the application or testimony on which the certificate of approval was based.
- E. **Certificate Transferal:** A certificate of zoning compliance issued to a specific location shall not be transferred for use at another location or be transferred from one applicant to another. Application for a new certificate may be made by the new owner.

#### 4-7-2 **CONDITIONAL USE PERMIT**

A permit may be authorized by the Commission for uses stipulated as conditional within specific zones as described in Articles 3 and 4 of this Code, provided:

- A. The subject use shall be compatible to the existing use in that zone;
- B. Projected traffic flows do not impact existing transportation systems beyond safe operational capacity;
- C. Existing infrastructure capacities are adequate to accommodate the new development, or provide the necessary infrastructure expansion to support the proposed development;
- D. The proposed development shall not significantly affect the environment (e.g. historical, archeological, ground and surface water, vegetation and air quality);
- E. The proposed development shall not adversely affect adjoining property values or endanger public safety.
- F. **Conditions Applied to Application:** Conditions may be applied to the permit:
  - 1. Additions of landscaping, walls, parking areas, number of parking spaces or other requirements to avoid noise, vibration, odor, and health hazards may be added to the list of compulsory improvements. Failure to comply will invalidate the permit.

2. Additions to roads and signage may be required to reduce excessive traffic congestion or other road hazards.
3. A plan must be generated by the applicant to show how each of the areas of concern are to be remedied.

**G. Application Requirement**

The application for a conditional use permit shall be in the format stipulated by the City and shall contain plans and other information as required by the City. After reviewing the application for completeness, the City Clerk shall place the completed application upon the agenda of the Commission.

**H. Posting and Notification for Conditional Use Permit**

Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification.

**I. Review**

Each conditional use permit shall be subject to review annually by the Commission on the anniversary following its approval. If it is determined from the review that the current use is significantly different or larger in scale than that originally approved, the conditional use permit may be revoked by the Commission.

**J. Transferal**

Conditional use permits shall not be transferable from location to location, building owner to building owner, or applicant to other party.

**4-7-3 VARIANCE USE PERMIT**

A variance may be authorized by the Commission for purposes that conform to the provisions of this Code. The variance may provide relief from the strict application of dimension, distance, parking or setback requirements of this Code.

**A. Provisions for Variance**

1. The subject property must be irregular, narrow, shallow, or steep or otherwise have physical conditions where application of the requirements of this Code would result in practical difficulty or unnecessary hardship to the owner in the use of the land or building.
2. A variance shall not be granted in such case where it would adversely affect adjoining properties, impair established property values or endanger public safety.

3. A variance shall not be granted to change the use of a structure or property that is not otherwise permitted by right or by conditional or special use within the zone where the structure or property is located.

**B. Application Requirement**

The application for variance shall be in the format stipulated by the City and shall contain plans and other information as required by the City. After reviewing the application for completeness, the City Clerk shall place the completed application upon the agenda of the Commission.

**C. Notification and Posting for Variance Use Permit**

Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification.

**D. Revocation**

A variance shall be automatically revoked in the event a building permit for the approved variance has not been obtained within ninety (90) days or construction has not been completed within one (1) year after the building permit has been issued. The Commission may grant ninety (90) days extension if deemed appropriate.

**E. Reapplication for Variance**

In the event an Application for Variance is denied by the Commission, the applicant may appeal within thirty (30) days to the City Council. If the application is denied by the City Council, there shall be no reapplication for the same variance for a period of one (1) year after the date of the decision.

**4-7-4 SPECIAL USE PERMIT**

A Special Use permit is required for a specific land use that is not permitted by right within the zone wherein it is requested. A special use permit may be authorized by the City Council after hearing the recommendation of the Commission. Follow rules listed in 4-18-9 and 4-18-10 for notification and posting.

**A. Provision for a Special Use Permit**

1. The proposed use must be unusual and unique and may be incompatible with planned property uses within the general area and zone in which the special use is proposed.
2. Special Use permits shall not be granted in such cases where it would adversely affect adjoining property values or endanger public safety.
3. Special Use permits shall not be granted in such cases where the use is or will become detrimental to the character of the zone wherein it is located.

4. Special Use permits do not follow the land but expire when the special use stops and/or a new owner takes possession of the property. The new owner of the property may reapply for a new permit.

**B. Application Requirements**

The application format for a Special Use permit shall be in the format stipulated by the City. There shall be a comprehensive statement included with each application stating in detail, the reason for the request, the purpose and the use of the property, all improvements to be made and a site plan that includes the following:

1. Location of existing and proposed structures including the dimensions of setbacks;
2. Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas and major points of access, including street pavement width and right-of-ways;
3. Location and treatment of open spaces including landscaping plan and schedule;
4. Lighting and Appropriate Signage;
5. A drainage plan, site plan, landscaping plan and grading plan shall be required for all special use developments.

**C. Notification Public Hearing and Notice Procedure for Special Use Permit**

Follow rules listed in 4-18-9 and 4-18-10 for notification and posting.

**D. Review and Approval**

The City Council may deny Special Use permits or may grant final approval with additional conditions imposed that the Council deems necessary to ensure that the purpose and intent of this Code is met and to protect and provide safeguards for persons and property in the vicinity.

**E. Time Limit and Revocation**

The City Council may impose a time limitation on a Special Use permit. If a special use is not initiated within one year following approval or if a special use is discontinued for a period of one (1) year, the permit shall be automatically revoked. All improvements shall be in accordance with the development standards of the zone except as otherwise authorized by the Special Use permit. Significant improvements shall result in the revocation of the special use permit.

**F. Resubmission of Application for Special Use**

Application for a Special Use permit shall not be resubmitted or reconsidered for a period of six months after it has been acted upon by the City Council.

**G. Zoning Change**

Approval of a special uses shall not be considered a zoning district change.

**4-7-5 HOME-BASED BUSINESS LICENSE**

A Home Occupation (business) permit is required for the conduct of trade, services or manufacturing within a dwelling unit in a residential zone. All home occupation permits shall be reviewed and approved by the person issuing building permits. Allowable uses and restrictions for home occupation permits are stated in the definition for Home Occupation in Appendix A. See also Sections 4-3-1; 4-3-2; 4-3-3 and 4-3-4.

**A. Provisions for Home-Based Business License.**

Home occupation permits shall not be granted in such cases where they would adversely affect adjoining properties, impair established property values, unreasonably increase vehicle traffic flow or endanger public safety.

**B. Application Requirements**

The application for a home-based business license shall be in the format stipulated by the City and shall contain plans and other information as required by the City. After reviewing the application for completeness, the City Clerk shall give it to the person that approves Building Permits.

**C. Restrictions**

**1. Parking restrictions**

Any rules to be determined by site visit.

**2. Hazardous Waste**

No hazardous waste storage as determined by Nuisance Ordinance is allowed to be present on site.

**3. Public Health and Welfare**

No public health issues will be allowed on site that would endanger the welfare of customers or neighbors.

**D. Annual Renewal**

A home-based business license shall be renewed annually by Building Permit personnel.

**E. Transferal**

Home-based business license shall not be transferable from location to location (unless approved by Building Permit Personnel), building owner to building owner or applicant to other party.

**4-7-6 BUILDING PERMITS REVIEW**

By approving this zoning ordinance, the Rio Communities Governing body shall accept responsibility of the issuance and final review of Building Permit forms to ensure compliance with this code. Chairman of the Planning and Zoning Commission, or other person designated by the Mayor and approved by the City Council are designated to approve or disapprove the forms and handle the process. Any questionable permits are referred to the Planning and Zoning Commission for resolution. CID is responsible for all rules involving construction standards. The city's designated signatory on the Building Permit forms are responsible only for zoning and flood plain compliance. The Chairman or Vice Chairman of the Planning and Zoning Commission, are the signatory for any situations that go to Planning and Zoning for review. The county flood plain administrator is responsible for any flood plain issues. Contact Rio Communities City Hall for building permit and compliance forms. Return all forms to Rio Communities City Hall for processing and payment of review fees. CID website is [www.rid.state.nm.us](http://www.rid.state.nm.us). City Hall telephone # is 505-861-6803.

**4-7-7 FEE SCHEDULE:** A complete listing of fees can be found by contacting city clerk, visiting city website at [www.riocommunities.net](http://www.riocommunities.net) or looking at Appendix B (when available).

**4-7-8 TRANSPORT AND PLACEMENT PERMIT FOR ACCESSORY BUILDINGS**

A transport and placement permit is required for any accessory building moved into the city limits to assure proper placement on the lot.

**ARTICLE 8 ZONING CODE ENFORCEMENT**

**4-8-1 DUTY TO ENFORCE**

**4-8-2 ZONING CODE APPROVAL**

**4-8-3 LEGAL DOCUMENTS FOR CODE ENFORCEMENT**

**4-8-4 ZONING CODE VIOLATIONS AND PENALTIES**

**4-8-5 APPEALS TO ZONING CODE**

**4-8-1 DUTY TO ENFORCE**

It shall be the duty of the Code Enforcement Officer or City Council's designee to enforce this Code.

**4-8-2 ZONING CODE APPROVAL**

- A. No building or land shall be used or occupied, nor may a use of a building or land be converted or changed, in whole or in part, until a certificate of zoning compliance, variance or applicable permit has been issued by the City.
- B. The Code Enforcement Officer shall maintain a record with the City Clerk of all certificates of zoning compliance, variances and permits and copies shall be furnished upon request to any person for the cost of reproduction.

#### **4-8-3 LEGAL DOCUMENTS FOR CODE ENFORCEMENT**

The Code Enforcement Officer may at their discretion require affidavits, disclosure statements, deed restrictions or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

#### **4-8-4 ZONING CODE VIOLATIONS AND PENALTIES**

- A. It shall be a violation of this Code for any person, firm, or corporation to unlawfully neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any requirement pursuant thereto, or in any way use, change or construct a building or structure in non-conformance without zoning approval.
- B. Violations of this Code shall be brought into compliance, abated or removed. Failure to do so shall be prosecuted in municipal court as a violation. In all such cases that the Court rules to allow a structure to remain in non-conformance with this Code, there shall be a *proforma* action (intended to facilitate the legal process) by the City Council permitting such use. Such action shall be consistent with the Court's ruling, and thereafter the non-conforming use shall be considered legal nonconforming use subject to the provisions established by the court.

#### **4-8-5 APPEALS TO ZONING CODE**

- A. Appeal of any final action or decision by the code enforcement officer or the Planning and Zoning Commission (hereafter the commission) may be filed with the city clerk within thirty calendar days after the date of the final determination by the code enforcement officer or the commission.
- B. An appeal does not stay all proceedings in furtherance of the action appealed unless the respondent proves that by reason of facts or circumstances, enforcement would cause imminent harm unless the city council, for good cause, grants a stay.
- C. When an appeal alleges that there is error in any order, requirement, decision or determination by the code enforcement officer or the commission in the enforcement of NMSA 1978, Sections 3-21-1 through 3-21-14 , or any ordinance,



resolution, rule or regulation adopted pursuant to those sections, the council by a majority vote of its members may:

1. In conformity with Sections 3-21-1 through 3-21-14, NMSA 1978:
  - a. Affirm any order, requirement, decision or determination of the code enforcement officer or commission;
  - b. Reverse any order, requirement, decision or determination of the code enforcement officer or commission in favor of the appellant; or
  - c. Modify or alter any order, requirement, decision or determination of the code enforcement officer or commission.
- D. There are no appeals from recommendations of the code enforcement officer or the commission that are neither final nor actionable under this title.
- E. A person aggrieved by a decision of the code authority or any officer, department, board or bureau of the code authority may appeal the decision pursuant to the provisions of Section 39-3-1.1, NMSA 1978— Appeals to district court; trial de novo.

## **ARTICLE 9: PROVISIONS OF NON-CONFORMING USE**

### **4-9-1 LEGAL NON-CONFORMING USE DEFINED**

### **4-9-2 EXCEPTION**

### **4-9-3 CONTINUANCE DEFINED**

### **4-9-4 NON-CONFORMING USE – ENLARGEMENT AND RENOVATION**

### **4-9-5 DISCONTINUANCE OF NON-CONFORMING USE**

### **4-9-6 CERTIFICATE REQUIRED FOR NON-CONFORMING USE**

### **4-9-7 REVIEW AND RENEWAL OF NON-CONFORMING USE**

### **4-9-8 TRANSFERAL OF NON-CONFORMING USE**

### **4-9-1 LEGAL NON-CONFORMING USE DEFINED**

Legal non-conforming use is the use of any land, building or structure that is contrary to current zoning codes, but at the time the property was purchased or the building or

structure was constructed, the land, building or structure conformed to and was in accordance with the legally established zoning codes.

#### **4-9-2 EXCEPTION**

If the continuation of non-conforming use of any land, building or structure presents an immediate threat to the general public, their welfare, or violates existing safety codes, the legal or registered owner of that land, building or structure shall be notified.

- A. Upon notification, the owner shall have thirty (30) days to respond in writing to the City with a plan that describes a proposed method to mitigate the immediate threat or hazard to the public.
- B. The proposed plan shall be reviewed by the Commission and the property owner notified of the Commission findings within thirty (30) days in writing.
- C. If the proposed mitigation method is approved by the Commission, the property owner shall have thirty (30) days to implement the mitigation. However, if the property owner's mitigation plan is rejected by the Commission, the property owner shall implement the findings of the Commission.
- D. The property owner may petition the Commission for a time extension, but only if the owner can demonstrate that the mitigation presents a severe financial burden.

#### **4-9-3 CONTINUANCE DEFINED**

- A. Continuance allows for the continued legal use of any land, building or structure based on the land and building zone codes that were established at the time the land was purchased or the building or structure was constructed.
- B. Continued use of any non-conforming land, building or structure, shall be granted upon review and approval by the City's Planning and Zoning Commission,
- C. The allowance of any non-conforming land, building or structure shall not be changed to a less restrictive use except by zoning district change.

#### **4-9-4 NON-CONFORMING USE – ENLARGEMENT AND RENOVATION**

- A. A non-conforming use of any building or structure shall not be enlarged, replaced, moved or extended in size or use.

- B. Normal renovation and repairs shall be permitted, provided there are no structural alterations.

**4-9-5 DISCONTINUANCE OF NON-CONFORMING USE**

In the event that a non-conforming use of any land, building or structure is discontinued, the legal owner shall have one (1) year, from the time notification of discontinuance is issued, to make all necessary modifications or alterations that shall bring the land, building or structure into compliance with this Code.

**4-9-6 CERTIFICATE REQUIRED FOR NON-CONFORMING USE**

- A. By the adoption of this Code, a non-conforming certificate shall be required for any land, building or structure that does not conform to this Code.
- B. It shall be the responsibility of the legal property owner of any non-conforming land, building or structure to provide affidavits or other legal documents to the City's Planning and Zoning Commission that establishes the legal non-conforming status of the land, building or structures.

**4-9-7 REVIEW AND RENEWAL OF NON-CONFORMING USE**

- A. A non-conforming use certificate shall be reviewed for renewal each year upon the anniversary of its issuance by the Commission.
- B. During the annual review/approval process, if the Commission determines that the current use of the land, building or structure is significantly different or the building or structure is larger in scale than was originally approved, the permit may be revoked by the Commission.

**4-9-8 TRANSFERAL OF NON-CONFORMING USE**

Any non-conforming use certificate may not be transferred by sale from one owner to another. New owners may re-apply.

**ARTICLE 10 PARKING REQUIREMENTS**

- 4-10-1 PURPOSE**
- 4-10-2 PHYSICAL SPACE REQUIREMENTS**
- 4-10-3 PARKING SPACE CRITERIA**
- 4-10-4 HANDICAPPED PARKING**
- 4-10-5 LOADING SPACE**
- 4-10-6 ENLARGEMENT OR CHANGE OF USE**
- 4-10-7 JOINT USE**
- 4-10-8 PARKING SPACE SIZE**
- 4-10-9 PARKING PLAN APPROVAL**
- 4-10-10 PARKING CONSTRUCTION STANDARDS**

- 4-10-1 PURPOSE**

This section shall establish the parameters for parking at business establishments based on the type of business and its use. For uses not specified in this Code, the category that is the most similar shall be followed. In an effort to reduce on-street parking, front yard parking is permitted. However, at no time shall parking be permitted on sidewalks or any pedestrian walkway. Furthermore, any formula used in determining the allowable number of parking spaces is rounded to the nearest whole number. Parking shall be provided on the same lot of the structure being served, except with Planning and Zoning Commission approval.

**4-10-2 PHYSICAL SPACE REQUIREMENTS**

As physical space allows, businesses shall adhere to the industry standard for parking spaces, as defined by the Urban Land Institute (ULI):

**ULI Parking Standards Standard Car**

Type	Stall Width	Stall Depth	Maneuvering Width
90 degree	8 feet 3 inches – 9 feet	18-19 feet	23 feet
60 degree	8 feet 3 inches – 9 feet	19-22 feet	13 feet 6 inches
45 degree	8 feet 3 inches – 9 feet	17-21 feet	11 feet 10 inches
30 degree	8 feet 3 inches – 9 feet	15-16 feet	11 feet

**Table 6**

**4-10-3 PARKING SPACE CRITERIA**

**A. Lodging and Residential**

1. Bed and Breakfast, Boarding Houses and Similar Uses shall provide two (2) spaces per establishment plus one (1) space per guest room.
2. Motels and Hotels shall provide one (1) space per guest room. If a restaurant or sales shop is co-located on or near the establishment’s property, the number of spaces allowed shall be determined by Joint Use. See Article 4-10-7.
3. Single-Family Dwellings located within an R-1 District shall provide two (2) spaces per unit. In addition, two spaces may be added in a front yard area, if needed. Asphalt, concrete, base course or gravel must be installed for all parking spaces. See Article 4-10-9. Curbing is required for use of gravel or base course products to prevent spreading of the materials. A no charge building permit is required for all additional parking space requests.
4. Multi-Family Dwellings located within an R-2 District shall be allowed two (2) spaces per unit.

## **B. Retail Establishments**

- 1. Small Volume Retail Sales:** Stores that are three-thousand (3,000) square feet or less in total floor area shall provide three (3) spaces per establishment, plus an additional space for each four-hundred (400) square feet of gross floor space. Examples are stores that sell carpet, cabinets, parts, shoes, clothing, furniture, electrical supplies, plumbing supplies and similar items.
- 2. Larger Volume Retail Sales:** Stores that are greater than three-thousand (3,000) square feet in total floor shall provide one (1) space for each three-hundred (300) square feet of gross floor space. However, a minimum of three (3) spaces shall be provided. Examples are stores that sell large volumes of products such as shopping centers, grocery stores or similar types.
- 3. Retail Sales of Vehicles, Heavy Equipment or Similar Large Products:** These types of businesses shall provide one of the following options:
  - a. One (1) space for each business vehicle plus one (1) space for each three-hundred and fifty (350) square feet of gross interior floor space, or
  - b. Six (6) spaces plus one (1) space for each company employee.
  - c. The greater of these two options shall apply to this category.
  - d. Examples are sales of recreational vehicles, mobile homes, automobiles, boats and similar businesses.
- 4. Storage Areas within a Retail Business:** Any retail sales business that designates more than twenty percent (20%) of the store's available gross floor space exclusively to storage of merchandise to be sold in the establishment, may deduct this storage area from the total gross floor area that is used to calculate their required parking spaces. However, no more than eighty percent (80%) of the gross floor area used for storage in this scenario may be deducted from the total in this calculation.

## **C. Entertainment Establishments and Restaurants**

- 1.** Any retail business that offers entertainment or food to the public shall provide one (1) space for each one-hundred (100) square feet of gross floor area plus one (1) space for each employee who is working during the establishment's peak hours of business or the largest shift on duty. Examples of such establishments include theaters, dance halls, private clubs or lodges, auditoriums, sports arenas, skating rinks, meeting halls and similar uses.
- 2.** Any retail business that offers participatory recreational activities to the public shall provide four (4) spaces for each alley, court or venue, plus one (1) space for each employee who is working during the establishment's peak hours of business

or the largest shift on duty. on the largest shift. Alley and Court Style Entertainment: Examples of establishments include bowling alleys, basketball courts, handball and tennis courts or similar uses.

3. Any retail business that offers beverages and or food to the public shall provide one (1) space for each one-hundred (100) square feet of gross floor area plus one (1) space for each two (2) employees who is working during the establishment's peak hours of business or the largest shift on duty. Examples of such establishments include lounges, bars, donut shops, coffee shops, cafes, restaurants and similar uses.
  - a. An establishment that has an outdoor patio area shall provide an additional one (1) space for each two-hundred (200) square feet of patio area.
  - b. An establishment that has a drive-up window shall provide that the drive-up lane is a minimum width of twelve (12) feet and a length that shall provide for maximum traffic count so as to prevent overflow onto any public thoroughfare. In short, no on-street waiting line is permitted.

**D. Offices and Personal Service Businesses**

1. Any Child Care Center, Nursery or Institutional Home shall provide one (1) space per employee for each shift plus one (1) space for each ten (10) children or residents when at maximum capacity.
2. Any Drive-Up Window Type Services establishment shall provide lane(s) that are a minimum width of twelve (12) feet and a length shall provide for maximum traffic count so as to prevent overflow onto any public thoroughfare. No on-street waiting line is permitted.
3. Any business that offers a Professional Services shall provide one (1) space for each two-hundred and fifty (250) feet of gross floor space. Examples of such businesses include hairdressers, barbers, medical offices, dental offices or similar uses.
4. Any Large Business Office shall provide one (1) space for each business owned vehicle plus one (1) space for each three (300) square feet of gross floor area. Examples of such businesses include utility companies, banks, telephone or communication companies or similar uses.
5. Any Drive-In Bank shall provide one (1) space for each full-time employee and shall fulfill the requirements for overflow as stated in Article 4-10-3(D)(2).

6. A Funeral Home shall provide one (1) space for each fifty (50) square feet of floor area in funeral home plus one (1) space for every two (2) seating spaces in the facility. A turn-around area must be provided to accommodate vehicles associated with burial services.
7. Any Small Business Office shall provide two (2) spaces plus one (1) space for each three hundred (300) square feet of gross floor area. Examples of such businesses include engineering, real estate, law offices or similar uses.
8. Any High-Volume Service Business shall provide one (1) space for each two hundred (200) square feet of floor area. Examples of such businesses include Self Service Laundry or similar uses
9. Any Low Volume Service Business shall provide one (1) space for each two-hundred (200) square feet of floor space. Examples of such businesses include equipment rental, repair shops, dry cleaning or similar uses.

**E. Churches, Community Centers, Healthcare Facilities and Schools**

1. A church shall provide one space for each four (4) seats in main assembly hall, but only when at maximum capacity.
2. A Community Center shall provide one (1) space for every two-hundred (200) square feet of floor area. Examples of such establishments include museums, administration buildings, libraries, art galleries or similar uses.
3. Any Healthcare facility shall provide one (1) space for each two (2) beds plus one (1) space for each employee who is working during the establishment's peak hours of business or the largest shift on duty.
4. A School shall provide one (1) space for each two hundred (200) square feet of floor area. Fifty percent (50%) shall be added to the school's total floor area calculation if the school has, on its premises, a gymnasium or auditorium. Examples of such schools include a High School or Junior High School.
  - a. For any Elementary and Pre-school Facility, one (1) space for each classroom plus one (1) space for each employee who is working during the establishment's peak hours of business or the largest shift on duty shall be provided.

**F. Warehouse, Manufacturing, or Wholesale Establishments**

1. Any Business whose primary function is the storage or warehousing of goods for distribution shall provide one (1) space for each employee plus one (1) space for



each two thousand (2,000) square feet of area, up to a total of thirty-five thousand (35,000) square feet. In addition, one (1) space, appropriately sized, for each company-owned truck or vehicle shall be provided.

2. Any business whose primary function is the large-scale production of goods or services shall provide one (1) space per employee that is equal to the largest scheduled shift plus one (1) space, appropriately sized, for each company owned vehicle or truck. In addition, one (1) space for each one thousand (1,000) square feet of floor area, up to twenty-thousand (20,000) square feet shall be reserved and designated for Visitor Parking.
3. Any business whose primary function is the large-scale distribution of wholesale goods or services shall provide one (1) space per each five-hundred (500) square feet of floor area; provide one (1) space, appropriately sized, for each company-owned truck or vehicle and shall designate and reserve one (1) space for each one-thousand (1,000) square feet of floor area, up to twenty-thousand (20,000) square feet for Visitor Parking.

**4-10-4 HANDICAPPED PARKING**

All parking within government, commercial and industrial properties shall comply with:

- A. The 2010 Standards for State and local governments that consist of the Title II regulations at 28 CFR 35.151 and the 2004 American Disabilities Act Accessibility Guidelines (ADAAG) at 36 CFR part 1191, appendices B and D;
- B. The 2010 Standards for public accommodations and commercial facilities that consist of the Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADAAG at 36 CFR part 1191, appendices B and D.
- C. The minimum number of designated *handicapped* parking spaces (in relation to the total number of parking spaces within any given area), for all zones except R-1 Single Dwelling units shall be:

Total Spaces per Parking Lot	Minimum Designated Handicapped Spaces
0 to 5	1
26 – 35	2
36 – 50	3
51 – 100	4
101 – 300	8
a. Than 300	8 + 1 for each additional fifty (50) spaces

**Table 7  
(ADA Minimum Requirements)**

1. All Handicapped designated parking spaces shall be located as close as possible to the nearest curb cut or access to entryway. Additional parking spaces to meet the maximum need shall be provided in establishments that cater to elderly, handicapped or very ill customers.

**4-10-5 LOADING SPACE REQUIREMENTS**

The Planning and Zoning Commission or the Code Enforcement Officer shall determine the appropriate area necessary for determining the amount of space required for loading functions.

**4-10-6 ENLARGEMENT OR CHANGE OF USE**

When the floor space of a building is enlarged by more than a ten percent (10%), the new dimensions shall determine the appropriate number of parking spaces required.

**4-10-7 JOINT USE**

When businesses that are located close to each other choose to use the same parking area, the number of spaces will be calculated by using the maximum number of employees per shift for both companies and applying the formula for the type of business that requires the most spaces. Approval must be obtained from the Planning and Zoning Commission. A written agreement from all businesses must be submitted with the request to the Planning and Zoning Commission.

**4-10-8 PARKING SPACE SIZE**

- A. Each public parking space shall provide for the ingress and egress into a public street by each automobile, without moving any other automobile.
- B. Only R-1 Zoned property can ingress and egress to an alley.
- C. All remaining property must ingress and egress to a public street or highway.

**4-10-9 PARKING PLAN APPROVAL**

Two sets of detailed plans showing all parking, entry points and exit points of the property shall be submitted to the Planning and Zoning Commission as part of the Building Permit approval package.

**4-10-10 PARKING CONSTRUCTION STANDARDS**

All parking spaces covered in the provisions of this Code shall:

- A. Be paved with asphalt, concrete or base course per Building Permit specifications.
- B. Have bumper guards per plans or directions of the Commission.
- C. Contain aisle safety markings and necessary spaces.
- D. Provide landscaping in compliance with Article 11 of this Code.
- E. Meet adequate drainage requirements, including retaining all water on site. A drainage plan must be included when parking spaces are in the path of normal drainage or needed to retain water run-off. Two copies must be submitted with request for Building Permit.

**ARTICLE 11 STANDARDS FOR LANDSCAPING**

- 4-11-1 PURPOSE**
- 4-11-2 LANDSCAPE STANDARDS**
- 4-11-3 LANDSCAPE LOCATION STANDARDS**
- 4-11-4 LANDSCAPE REQUIREMENTS**
- 4-11-5 LANDSCAPE PLAN**
- 4-11-6 MAINTENANCE AND IRRIGATION**
- 4-11-7 SCREENING**
- 4-11-8 CLEAR LINE OF SIGHT TRIANGLE**

**4-11-1 PURPOSE**

1. **A.** The City of Rio Communities desires to preserve and fully promote visually attractive development of all land within the city limits. It is also the City’s intention to improve environmental quality.

- B. Landscaping shall follow and be maintained to the guidelines found within this Article. Whenever possible, indigenous and drought tolerant plants should be used.
- C. The standards included are considered to be minimum acceptable for the project.

#### **4-11-2 LANDSCAPE STANDARDS**

- A. New construction in R-1, R-2, C-1, C-2, C-3, B-M and I-3 Zones shall contain a landscaped area equivalent to ten percent (10%) of the total of all driveways, access points, sidewalks and loading areas on the parcel. This rule also applies to all new MH-1 subdivisions and MH-2 parks.
- B. Any reconstruction or addition to R-1, R-2, C-1, C-2, C-3, I-1/I-2 B-M or I-3 parcels with a value of more than \$100,000 shall require that the lots modified be brought up to the minimum specifications in this Article.

#### **4-11-3 LANDSCAPE LOCATION STANDARDS**

- A. A minimum of 50% of the landscaping shall be in the front of the building.
- B. Lots with side streets shall have a minimum 25% of the landscaping in the front yard and a minimum 25% on the side yard facing the side street.

#### **4-11-4 LANDSCAPE REQUIREMENTS**

- A. Landscaping may consist of ground covers (e.g. low shrubs, flowers, grass, trees, cactus, or native desert plants). Cottonwoods are not recommended.
- B. All plantings shall have a system to reduce blowing sand (e.g. gravel, mulch, decorative rock, bark or low water usage native grasses are examples).
- C. Trees requiring excessive water (e.g. Chinese Elm, Mulberry, Russian Olive or Salt Cedar) are not recommended.

#### **4-11-5 LANDSCAPE PLAN**

- A. Landscaping plans are required for all Building Permits of new dwelling or business construction, regardless of the complexity of the project.
- B. A landscaping plan should be attached to the Building Permit.

**4-11-6 MAINTENANCE AND IRRIGATION**

- A. Manual or automatic irrigation systems are appropriate to water plants. Drip irrigation system is recommended to reduce evaporation.
- B. Dead or dying plants will be removed and replaced before the next growing season.

**4-11-7 SCREENING**

The use of thick shrubbery, walls, berms or sight-obscuring fences to minimize the potentially adverse impact of one land use on another is optional. However, if used, all screening:

- A. Shall be at least three (3) feet in height, but shall not exceed six (6) feet in height; and
- B. Shall conform to the clear line of sight triangle requirements as stated in Section 4-11-8; and
- C. Shall not adversely affect the public or surrounding property owners, and
- D. Shall be maintained, trimmed or otherwise kept in good repair.

**4-11-8 CLEAR LINE OF SIGHT TRIANGLE**

- A. A triangle formed by the intersection of two curbs or the edge of a city maintained roadway measured back from the intersection or roadway twenty-five feet along the curb line or city roadway. A continuous unobstructed view of twenty-five (25) feet in both directions of the intersection or roadway to a height of 3 feet or more must be maintained.
- B. All vegetation must be kept trimmed in order to keep this area open and free of obstructions.

## **ARTICLE 12 OUTDOOR LIGHTING**

- 4-12-1 PURPOSE**
- 4-12-2 AUTHORITY**
- 4-12-3 OUTDOOR (EXTERIOR) LIGHTING DEFINED**
- 4-12-4 CONFORMANCE**
- 4-12-5 EXEMPTIONS**
- 4-12-6 VARIANCE**
- 4-12-7 GENERAL REQUIREMENTS**
- 4-12-8 LEGAL BASIS**
- 4-12-9 PROTECT THE NIGHT SKY (DARK SKY)**

### **4-12-1 PURPOSE**

- A.** The Article is intended to permit adequate lighting that promotes public safety by encouraging the use of outdoor artificial illuminating devices that will not impede

on astronomical observations resulting from the emission of undesirable light rays into the night sky.

- B. All outdoor lighting installations shall conform to the provisions of this Article and all other related codes of the City, specifically the Uniform Building Code (UBC) as amended and shall require permit and inspection.

#### **4-11-2 AUTHORITY**

The Night Sky Protection Act, NMSA 1978, § 74-12-2, regulates the use of “outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy.” Accordingly, all exterior lighting shall comply with the New Mexico “Night Sky Protection Act” and the specifications as stated within this Section.

#### **4-12-3 OUTDOOR (EXTERIOR) LIGHTING DEFINED**

Outdoor artificial illuminating devices, outdoor fixtures, lamps, spot or flood lights and other devices, whether permanent or portable that are used for illumination or advertisement. The application of such devices may be used for:

1. Building and structures
2. Recreational areas
3. Parking lot lighting
4. Landscape lighting
5. Billboards and other signage (advertising or other)
6. Street lighting

#### **4-12-4 CONFORMANCE**

- A. This Section does not apply to interior lighting.
- B. Any non-conforming outdoor fixture installed prior to and operable on the effective date of this Code shall be removed or converted to a conforming fixture when the existing fixture becomes inoperable or un-repairable.
- C. The City may require an illuminating device that is non-conforming to be corrected if the City determines that the non-conforming use is creating a nuisance glare or disabling glare as defined in Section 4-12-7.

- D. All existing outdoor lighting fixtures owned and maintained by any public utility company within the City shall be required to remove or comply with the “Night Sky Protection Act”, NMSA 1978, Section 74-12-1 et. seq., and this Section, within 12 months from the enactment of this Code.
- E. All new installations and modification or replacement to existing non-conforming fixtures shall comply with the Section.
- F. Compliance with this Section shall be administered and enforced by the City and the Planning and Zoning Commission or designated City personnel.
- G. In the event of a conflict with any other section of this article, the more stringent requirement shall apply.

**4-12-5 EXEMPTIONS**

- A. Traffic control signals and devices.
- B. Outdoor lighting fixtures necessary for safety at schools and fire stations, to include lighting for outdoor sporting events.
- C. Streetlights installed prior to the effective date of this Section.
- D. Temporary emergency lighting (e.g., fire, police, repair workers) or moving vehicle lights.
- E. Navigation light or communications towers and flagpole displaying the United States flag after sundown.
- F. Seasonal light decorations
- G. Special situations approved by the City for temporary or periodic events (e.g., concerts, fairs, festivals, fiestas, flea markets, etc.)

**4-12-6 VARIANCE** Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification. Any resident or business may submit an application to the Commission for a variance from the requirements of this Section. Such request shall be in writing and shall be approved only when it is determined that a deviation or variance clearly demonstrates a need for enhanced security for personal property, business, or special activities or events.

- A. Each application shall state fully:
  - 1. The circumstances and conditions relied upon as grounds for an exemption;



2. The circumstances and conditions by which strict application of the provisions deprive the applicant of reasonable use of the land, building or outdoor light fixtures; and
3. The grounds by which the granting of the administrative exemption will not be injurious to the neighborhood or otherwise detrimental to the public, health, safety or welfare, and
4. Include plans indicating the location, type, shielding device and height of luminaires including both building and ground-mounted fixtures along with manufacturer's specification (e.g. photometric data, angle of light emission).

**4-12-7 GENERAL REQUIREMENTS**

The following general standards shall apply to all outdoor lighting installed after the effective date of this Code adoption, except as stated above in Section 4-12-4.

- A. All exterior lighting shall be hooded or shielded with no upward light escaping that would contribute to light pollution.
  1. A fully shielded illuminating device is one in which no light shall shine above the highest part of the device where light is emitted.
  2. A partially shielded illuminating device is one in which the light bulb is not visible, but is shielded by a frosted, partly opaque or colored siding.
- B. All exterior lighting shall be aimed downward onto the ground surface.
- C. Existing fixtures may be adapted to comply with this Section by adding a properly designed hood or shield, or by pointing any upward-mounted shielded fixture downward toward the ground surface.
- D. Any light falling onto adjacent property or street that results in nuisance glare or disabling glare shall not be permitted. Light trespass beyond property boundaries or above the horizontal plane shall be considered non-compliant.
- E. Any outdoor lighting fixtures shall be designed, installed, located and maintained such that glare onto other properties or streets shall be eliminated and all direct illumination kept within the boundaries of the fixture owner's property.
- F. Direct light emissions shall not be visible above the roofline or beyond the building edge.
- G. Accent or landscape lighting shall be directed onto foliage or objects and not toward the sky or onto adjacent properties.

- H. Spotighting on landscaping, foliage, and flagpoles shall be limited to 2600 lumens output (150 watt incandescent). The lamp shall be shielded and not create disabling or nuisance glare.
- I. Rotating, flashing, moving or stationary beacons of light used for advertising purposes or public events are prohibited.
- J. Exterior light fixtures shall be limited to fifteen (15) feet in height from grade.
- K. Where exterior lighting is used for security purposes or to illuminate walkways, entrances, driveways, equipment yards and parking lots, outdoor shielded lights shall be used.
- L. This section shall be enforced on the basis of a formal complaint in writing with the Planning and Zoning Department.

**4-12-8 LEGAL BASIS**

The legal basis for regulating the use of private property in the U.S. is based in the common law concept of “nuisance” where persons are entitled to “use and enjoyment” of their lands, so long as their acts do not interfere with the use or enjoyment of another. Accordingly, this Light Code is intended to provide proactive notice that certain “lighting” uses are prohibited or limited on the basis of the cross-boundary impacts. Additionally, this Light Codes makes no effort to control lighting design but only its effect.

**4-12-9 PROTECT THE NIGHT SKY (DARK-SKY)**

- A. **Title:** This ordinance together with the amendments thereto, shall be known and may be cited as the Dark Sky Ordinance.
- B. **Authority:** The Planning and Zoning Commission shall have the authority to require new lighting to ensure that such lighting shall meet the recommendations and guidelines of this Ordinance.
- C. **Purpose:** The general purpose of this Ordinance shall be to protect and promote safety, while maintaining the ability to view the night sky, by establishing regulations for exterior lighting. This Ordinance establishes standards for exterior lighting in order to accomplish the following:
  1. Protect against direct glare and excessive lighting
  2. Promote safe roadways for motorists, cyclists and pedestrians

3. Protect the ability to view and enjoy the night sky
4. Allow for flexibility in the style of lighting
5. Provide lighting guidelines
6. Reduce excessive lighting in neighborhoods

**D. Scope:** All exterior lighting installed in any and all zoning districts in the City of Rio Communities, after the effective date of this Ordinance, shall be in conformance with the standards established by this Ordinance.

**E. Review:** The Planning and Zoning Commission shall consider the following standards to ensure a balance of public safety to dark sky viewing.

1. All exterior area lights, including streetlights, parking area lights and landscape lights shall be shielded to produce a down lit light pattern that shall not extend beyond the owners parcel of land.
2. All non-essential exterior commercial and residential lighting should be turned off after business hours and/or when not in use. Motion sensor activated lights are encouraged.
3. The average exterior foot-candlelight level for new service stations shall not exceed:
  - a. 1,750 lumens or 137 foot-candles when using 100-Watt incandescent bulbs, or
  - b. 1,600 lumens or 125 foot-candles when using 23-Watt fluorescent light.
4. Upward Flagpole lighting is permitted.
5. Landscape lighting is allowed.
6. All radio, communication, and navigation towers that require lights shall have dual lighting capabilities.
  - a. For daytime, only white strobe lights shall be used.
  - b. For nighttime, only red lights shall be used.
7. Neon lights are only permitted pursuant to the Sign Ordinance.
8. It is highly encouraged that solar powered lights be installed whenever possible.

**ARTICLE 13 SIGNS, WALLS, AND FENCES**

**4-13-1 PURPOSE**

**4-13-2 GENERAL REGULATIONS FOR SIGNS**

**4-13-3 SIGN PERMIT**

**4-13-4 SIGN SAFETY**

**4-13-5 SIGN ILLUMINATION AND ANIMATION**

**4-13-6 LIMITATIONS ON ELECTRONIC MESSAGE SIGNS**

**4-13-7 SIGN REGULATIONS BY TYPE**

**4-13-8 NONCONFORMING SIGNS**

**4-13-9 SIGN EXCEPTIONS**

**4-13-10 POLITICAL SIGNS**

**4-13-11 WALL AND FENCE STANDARDS**

**4-13-1 PURPOSE**

- A. This Article is intended to provide regulations for the placement and orientation of all signs, walls and fences that shall not hinder or obstruct the clear and free vision of pedestrians or motorists in a manner that would create a traffic hazard.

- B. This Article is also intended to standardize the design and construction of signs, walls, and fences within the boundaries of the City of Rio Communities in a manner that provides privacy, maintains security and promotes aesthetic improvement to property, while maintaining safety to the public.

#### **4-13-2 GENERAL REGULATIONS FOR SIGNS**

- A. The location of any sign shall not be designed, erected, or maintained, except in a manner approved by the Planning and Zoning Commission.
- B. Any sign mounted to a wall or building cannot project over the property line of that wall or building.

#### **4-13-3 SIGN PERMIT**

- A. Any billboard or sign to be erected within the City that exceeds one-hundred and twenty-eight (128) square feet of area and that identifies or advertises a business, product, service or trade shall first require an application for a sign permit, submitted to the Commission for approval.
- B. The application shall clearly state the proposed sign's construction materials, language, dimensions, location, its method for mounting and the desired length of posting.
- C. The Commission shall make a decision based on this ordinance. Approval, approval with limitations or denial are options. Approval with limitations of the request or denial are appealable to the City Council.
- D. The code enforcement officer has the right to inspect any sign for compliance. The owner of any non-compliant sign shall receive a citation. Normal procedures used by the Code Enforcement Officer are followed.

#### **4-13-4 SIGN SAFETY**

- A. Movable parts or audible devices are prohibited on any sign.
- B. A sign shall not be erected along any street or highway that would obstruct the clear vision of pedestrians or motorists in a manner that would create a traffic hazard.
- C. No sign shall be attached to any fire escape or standpipe or hinder in any way, the free ingress to or egress from any fire escape, door, or window.

- D. No sign of more than three (3) feet high above the level of a street curb shall be placed within a Clear Sight Triangle. A triangle formed by the intersection of two curbs or the edge of a city-maintained roadway measured back from the intersection or roadway twenty-five feet along the curb line or city roadway. A continuous unobstructed view of twenty-five (25) feet in both directions of the intersection or roadway to a height of 3 feet or more must be maintained.
- E. The Clear Sight Triangle rule shall apply to any entrance or exit of a commercial property.
- F. There shall be a minimum of twelve (12) feet vertical clearance and a six (6) feet horizontal clearance from overhead electric conductors and any other sign.

**4-13-5 SIGN ILLUMINATION AND ANIMATION**

- A. The use of any illumination device (lighting) on a commercial sign that varies in intensity, flashes, or blinks excessively, revolves or appears to create motion is prohibited.
- B. The illumination source on any sign shall be concealed from direct view.

**4-13-6 LIMITATIONS ON ELECTRONIC MESSAGE SIGNS**

Programmable electronic signs are prohibited within residential districts but are permitted elsewhere on condition they conform to the following:

- A. No sign shall display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.
- B. No sign shall contain any audio message.
- C. No sign message shall be displayed for a period of less than eight seconds.
- D. Each sign message shall be a complete thought in itself and shall not scroll a continued or subsequent sign message.
- E. Signs shall utilize automatic dimming technology that adjusts the brightness of the sign's message relative to the ambient light, so that at no time shall a sign exceed the brightness of the ambient light, as measured using a foot-candle meter.
  - 1. Light measurements shall be taken with a foot-candle meter aimed directly at the sign's message face, or at the area of the sign emitting the brightest light, if that area is not the sign's message face.

#### **4-13-7 SIGN REGULATIONS BY TYPE**

##### **A. For Sale or Rent**

A sign that is used for the purpose of identifying or advertising the sale or rental of any dwelling, apartment or real estate may be wall mounted or free-standing.

1. Such sign may be illuminated in accordance with the restrictions as stated in Subsection 4-13-5(A) of this Article.
2. The location of any sign shall be erected within property lots lines, excluding easements. See Subsection 4-13-2(B).
3. The sign shall not exceed five (5) feet in height and be more than twenty (20) square feet in area.

##### **B. On-Site Residential Business**

Signs on the residential premises that identify or advertise a business, service or trade within a residence shall:

1. Not be illuminated, and
2. Be limited to one (1) per dwelling unit, and
3. Not exceed three (3) feet in height, or
4. Be attached to the dwelling unit.

##### **C. Off-Site Residential Business**

Signs located off the residential premises that are used to identify, advertise or direct people to a residential business, service or trade:

1. May be free-standing but shall not exceed twelve (12) feet in height.
2. May be mounted or attached to a building but shall not exceed the height of that building.
3. May consist of two (2) signs when located on a frontage that is sixty (60) feet or less. On a frontage that is more than sixty (60) feet, up to four (4) signs are permitted.
4. May consist of smaller signs combined within a single frame. Such a sign shall be counted as one (1) sign but shall not exceed the height limit of twelve (12) feet as cited in Subsection 4-13-6(C)(1).

5. May exceed one hundred (100) square feet in area but shall be considered special use and shall require the approval of the City Council.
6. May consist of two (2) signs when located on a property with two (2) streets of frontage, with the optional second sign not to exceed fifty percent (50%) in area of the first sign.
7. May be portable, including axle-mounted, but shall be limited to one (1) and shall not exceed the total allowable square footage of any combined signs. Placement of any portable sign shall not impede traffic or hinder pedestrian flow and shall not be placed within six (6) of any street right-of-way or intersection.
8. Except as stated above, the combination of any signs shall not exceed one-hundred and twenty-eight (128) square feet in area.

**D. Billboards**

As billboards are defined as signs located on property other than that of the business that advertises a product, service, or trade, they are considered special use by this Code and shall require approval by the City Council based on recommendations by the Commission.

**E. Temporary Signs**

1. **Construction Sign:** A sign that designates a construction site shall not exceed thirty-two (32) square feet in area and shall be removed no later than fourteen (14) days after completion of construction.
2. **Real Estate:** A sign that identifies the location and advertises any property for sale or rent shall not exceed six (6) square feet in area and shall be removed no later than ten (10) days after the property is either sold or rented.
3. **All Other Temporary Signs:** A temporary sign except as expressly identified above in Subsections 4-13-6(E)(1)(2)(3) shall be limited to one (1) sign per lot or parcel and shall be prohibited if the sign:
  - a. Is erected on a public Right-of-Way or easement, or
  - b. Exceeds four (4) square feet in area, or
  - c. Is displayed more than three (3) consecutive days.



**F. Advertising Signs**

An advertising sign is defined as one that is located on any vacant private property. Such advertising sign shall meet the following conditions:

- 1. The maximum height of any sign shall not exceed fifteen (15) feet.
- 2. The sign shall not exceed seventy-two (72) square feet in area on each side and the sign shall not have more than two (2) sides.
- 3. The sign shall not be located within seventy-five (75) feet to an adjacent dwelling nor located within twelve (12) feet of the nearest street Right-of-Way in accordance with the Clear Line of Sight Triangle Rule. See Section 4-11-8.

**G. Sign Removal**

Any non-governmental sign where its function is to identify or advertise any event, occurrence, business, product, service, or trade shall be removed by the owner, agent of person benefiting from the sign immediately after the termination of any such function.

**4-13-8 NONCONFORMING SIGNS**

- A. As determined by the Code Enforcement Officer, any non-conforming sign shall be modified to conform to this Article within 10 calendar days of issuance of citation or notification.
- B. As determined by the Code Enforcement Officer, any sign that poses an immediate hazard to public safety shall be removed immediately, until such time that the Code Enforcement Officer determines the sign complies with this Article.
- C. As determined by the Code Enforcement Officer, any sign that contains speech that is obscene, defamatory, fraudulent, or contains fighting words, or speech that incites criminal conduct is deemed as non-conforming and shall be removed immediately.

**4-13-9 SIGN EXCEPTIONS**

Exemptions shall not be construed as relieving the owner of such signs from the responsibility of complying with applicable provisions of this section or other laws or regulations. The exemptions shall apply to the requirement for a sign permit and/or removal of any advertising support structure (e.g. posts or framing), and no sign permit or removal of any advertising support structure will be required for the following signs:

- A. Temporary signs, provided they are in compliance with the regulations herein;
- B. Residential signs, provided they are in compliance with the regulations herein;

- C. Signs not exceeding one (1) square foot of sign face and bearing only property numbers, mailbox numbers or names of occupants of premises;
- D. Flags and insignia of any government, except when displayed in connection with commercial promotion;
  - 1. American flags shall be displayed in accordance with Title 4 U.S. Code Chapter 1—The Flag.
- E. Legal notices, identification information or directional signs erected by governmental bodies;
- F. Integral decorative or architectural features of buildings, except letters and trademarks; and
- G. Signs directing and guiding traffic and parking on private property but bearing no advertising matter.
- H. Advertising support structure on property purchased within the twelve (12) months before, so long as the support structure is safely maintained.

#### **4-13-10 POLITICAL SIGNS**

- A. All political signs erected or displayed within the city limits of Rio Communities, shall adhere to the following:
  - 1. Signs may not exceed six (6) square feet for each premise in a residential zone.
  - 2. Signs erected in non-residential zones may not exceed thirty-two (32) square feet for each sign. This includes mobile or portable signs.
  - 3. Political signs may be erected no earlier than sixty (60) days prior to the primary or general election to which is pertains, and they must be removed within ten (10) days after the election or termination of candidacy, whichever comes first.
  - 4. Signs meeting the above criteria do not require permits from the City or Code Enforcement.
- B. Political signs placed upon a vehicle are allowed, provided that any vehicle with a sign face over two (2) square feet is not conspicuously or continually parked in such a manner so as to constitute a sign. The vehicle must be used for bona fide vehicular purposes (daily and normal driving to and from locations, with no intent to deceive).

- C. Political signs shall not be placed in the public right-of-way including street medians, sidewalks or utility poles.
- D. Political signs shall not encroach upon the clear sight triangle at street intersections. See Appendix A- Definitions.

#### **4-13-11 WALL AND FENCE STANDARDS**

##### **A. General Construction**

Any and all materials used in the construction of any residential or commercial fence, other than organic vegetation, shall comply with materials as expressly approved by any certified fencing manufacturer, or fencing association or fencing institute. The Planning and Zoning Commission shall have final approving authority to any wall or fence that deviates, differs, or does not comply with these standards. Such certified fencing organizations include, but are not limited to:

1. The American Fence Association; or
2. The Chain Link Fence Manufacturers Institute; or
3. The Vinyl Fencing Manufactures.

##### **B. Wind Loads**

All walls or fences, whether for residential or commercial use shall conform to wind load standards in accordance with the American Society of Civil Engineers' (ASCE) Minimum Design Loads for Buildings and Other Structures, Standard ASCE/SEI 7-10.

##### **C. Residential Heights**

Any residential wall or fence shall not exceed eight (8) feet in height above ground. The wall or fence may be erected and located anywhere in a residential yard, but it shall be in accordance with Line-of-Sight Triangle Rule as identified in this Code. Note: Refer to CID rules on building codes. A building permit is required for fences or walls more than 6 feet in height.

##### **D. Line of Sight Triangle Rule for Walls and Fences**

Any wall or fence must not violate the line of sign sight rule. A triangle formed by the intersection of two curbs or the edge of a city-maintained roadway measured back from the intersection or roadway twenty-five feet along the curb line or city roadway. A continuous unobstructed view of twenty-five (25) feet in both directions of the intersection or roadway to a height of 3 feet or more must be maintained.

**E. Retaining Wall**

Any wall or structure for the express purpose of retaining more than four (4) feet of soil or earth shall be designed, stamped, and signed by a professional engineer, registered, and licensed to practice in New Mexico. A copy of the retaining wall's engineered design and specifications shall be kept on file with the City Clerk.

**F. Commercial or Industrial**

Any wall or fence on a commercial or industrial property may be located anywhere on the property and may be up to eight (8) feet in height but shall comply with the Line-of-Sight Triangle Rule as specified in this Code.

**G. Swimming Pools**

All swimming pools, whether public or private shall be completely enclosed by a wall, fence, or barrier at least five (5) feet in height. Uniform Swimming Pool, Spa and Hot Tub Code 17.46.050.

**H. Electrified Wall or Fence**

Any wall, fence or barrier that has an attached component, wire, or element that produces an electrical field is permitted only in a Planned Development (PD) zone or by special use permit, pending review and approval by the Commission.

**I. Public Right-of Way**

Any wall, fence or barrier is prohibited in a public Right-of-Way.

**J. Barbed Wire**

1. Barbed wire attached to any wall, fence or barrier shall be at least six (6) feet above the highest adjacent ground surface.
2. The use of barbed wire in any residential zone, whether attached to any wall, fence, or barrier or unattached is prohibited.
3. The use of barbed wire in a Planned Development (PD) zone, when attached to a wall, fence or barrier is permitted.

**K. Mobile Home Parks**

Any wall, fence or barrier installed around the perimeter of a Mobile Home Park (MH-2) shall be at least six (6) feet in height.

**L. Other**

Any wall, fence, or barrier, when located in a residential side or rear yard or when used to surround a tennis, basketball, handball or other recreational area, shall not

exceed sixteen (16) feet in height and shall be located at least seven (7) feet from any property line.

## **ARTICLE 14 ANNEXATION**

- 4-14-1 ANNEXATION METHODS  
ANNEXATION PROCEDURES**
- 4-14-3 ANNEXATION PROCEDURES**
- 4-14-4 CITY COUNCIL DECISION**
- 4-14-5 POSTING AND NOTIFICATIONS**
- 4-14-6 RESUBMISSION OF ANNEXATION APPLICATIONS**
- 4-14-7 PROTEST PETITIONS**
- 4-14-8 APPROVAL CRITERIA**
- 4-14-9 ADDITIONAL APPLICATION REQUIREMENTS**
- 4-14-10 ANNEXATION AGREEMENTS**

### **4-14-1 ANNEXATION METHODS**

- A.** Any request or proposal for annexation of territory to the City of Rio Communities shall be filed and processed concurrently with an application for an amendment to the Rio Communities Zoning Map as provided in this Code.

- B. Zoning within annexed areas must be consistent with contiguous zoning or must be in accordance with the Comprehensive Plan of the City of Rio Communities.
- C. Methods for annexing territory shall either be through:
  1. Arbitration, pursuant NMSA 1978, Sections 3-7-5 through 3-7-10, wherein the governing body may annex contiguous territory; or
  2. A Commission, pursuant to NMSA 1978, § § 3-7-11 through 3-7-16, wherein the municipality petitions an Independent Municipal Boundary Commission (see NMSA 1978, § § 3-7-7 through 3-7-9 for the establishment of a Municipal Boundary Commission), to annex territory to the municipality; or a majority of the landowners of the territory proposed for annexation, petition the Municipal Boundary Commission to annex the territory to the municipality; or
  3. “Pursuant to NMSA 1978, §3-7-17, a petition signed by the owners of a majority of the number of acres in the contiguous territory for annexation shall be presented to the governing body for approval or rejection.”
- D. Zoning designation for newly annexed parcels shall be commensurate with the size, intent and purpose of established zoning designation unless otherwise classified by re-zoning.

#### **4-14-2 ANNEXATION PROCEDURES**

- A. Application and Petition: All annexation requests by petition by the landowners shall be accompanied by a letter of application, plat map of the area proposed for annexation, a site plan or concurrent re-zoning application, or both, for the area proposed for annexation; a proposed annexation agreement and other supporting materials required by the planning and zoning commission, and shall meet all other requirements of section 3-7-11 NMSA 1978. When the City is the petitioning landowner, a map showing the City-owned land to be annexed may be submitted in lieu of a plat.
- B. In the case of an annexation request by petition of landowners brought by the municipal boundary commission method, the petition must conform to the requirements listed in item [A] above as well as those set forth in section 3-7-13 NMSA 1978.

- C. When an annexation is initiated by the governing body under the arbitration or municipal boundary commission methods, the governing body shall provide the information required by sections 3-7-5 and 3-7-13 NMSA 1978, respectively. In addition, the following shall apply:
  - 1. When annexation is initiated to consolidate City boundaries or services, a plan demonstrating how such consolidation will take place shall be provided; and
  - 2. When annexation is proposed for purposes other than consolidation of City boundaries or services, a site plan shall be provided.

**4-14-3 PLANNING AND ZONING COMMISSION RECOMMENDATIONS**

~~A. " All proposed petition-method annexations shall be submitted to the Planning and Zoning Commission for review and recommendation at a public hearing based on the approval criteria set forth in Subsection 4-14-8 of this Article. In the course of the review, the Commission shall make complete findings of fact on all applications. The Commission shall not rule on the economic feasibility of any development proposed in an annexation master plan.~~

A. All proposed petition-method annexations shall be submitted to the Planning and Zoning Commission for review and written recommendation based on the approval criteria set forth in Subsection 4-14-8 of this Article. In the course of the review, the Commission shall make complete findings of fact on all applications. The Commission shall not rule on the economic feasibility of any development proposed in an annexation master plan.

B. The Commission shall transmit the application to the City Council, together with a recommendation based on criteria in Subsections 4-14-3 & 4-14-4 of this Article, as to approval, disapproval, desirable changes and special conditions and safeguards.

C. If the Commission does not act on a request for annexation application review within ninety (90) days after submission, the applicant may request review of the proposed annexation by the City Council.

**4-14-4 CITY COUNCIL DECISION**

A. Before taking action on any proposed petition-method annexation, the City Council shall hold a public hearing. After reviewing the Planning and Zoning Commission’s report, if any, the recommendation of the Commission and any evidence obtained at the hearing, the City Council shall take final action to approve, approve with conditions or deny the proposed annexation.

- B. When a proposed petition-method annexation has failed to receive the recommended approval of the Commission, the annexation shall not be approved by the City Council except by a majority vote of all the members of the City Council.

#### **4-14-5 POSTING AND NOTIFICATIONS**

Follow rules listed in 4-18-9 and 4-18-10 for notification and posting.

- A. The City shall submit each annexation petition to the board of County Commissioners as required by section 3-7-17.1 NMSA 1978.
- B. The City shall notify the school board about the public hearing date for all petition-method annexations over twenty-five (25) acres at least fifteen (15) days in advance of the hearing.
- C. The City shall notify the County Planning and Zoning Department of all annexations approved by the City.

#### **4-14-6 RESUBMISSION OF ANNEXATION APPLICATIONS**

Once an application for an annexation has been denied by the City Council after public hearing, a like or similar application for the same property shall not be filed within twelve months from the date of denial by the City Council, unless the applicant can establish before the Planning and Zoning Commission that there has been a substantial change in conditions and circumstances surrounding the request that would warrant a reconsideration of the matter.

#### **4-14-7 PROTEST PETITIONS**

If the owners of twenty percent (20%) or more of the land included in the area, or within one-hundred (100) feet, excluding public rights of way, of the area proposed to be changed by an annexation, protest in writing, the proposed petition-method of annexation shall not become effective unless it is approved by a majority of all the members of the City Council.

#### **4-14-8 APPROVAL CRITERIA**

- A. The Planning and Zoning Commission and the City Council shall review all petition-method annexation proposals on the basis of the following criteria. The reviewing entities must make complete findings of fact sufficient to show that the criteria provided in this section have been met before recommending or approving any annexation:
  - 1. The proposed annexation is within the urban area boundary;



2. Generally, the area to be annexed provides a consolidation of City boundaries and service areas; provided that allowance shall be made for those properties that are prohibited further that in all cases the proposed annexation must be contiguous with existing City boundaries;
3. A proposed development should not impose an economic burden on citizens or result in an indirect subsidy of services by the City. Specifically, evidence shall be provided by the applicant that the existing infrastructure; public facilities, including fire stations and parks; and operating services, such as ongoing garbage collection, police and fire, can accommodate the impacts of the proposed development.
4. The amount and proposed use for the land to be annexed is consistent with the City's policies regarding the provision of land sufficient to meet the amount, rate and geologic location of growth of the City. It is recognized that the City does not have an obligation to annex land if it is determined as a matter of City policy and the inventory of land, by land use category, is adequate to meet the projected absorption rates of the City for housing and other purposes for a specified number of years as set forth in that policy; and
5. Boundaries or services or is within the confines in the comprehensive plan.

**4-14-9 ADDITIONAL APPLICATION REQUIREMENTS**

- A. If the accommodation of the impacts of development cannot be demonstrated to the City's satisfaction as to the assumptions, methodology and data:
  1. The applicant and the City shall negotiate to offset the increased infrastructure expansion; the applicant may be required to contribute a proportional fair share of the cost of expansions.
  2. The City shall deny the annexation.
- B. When the annexed area creates a need for additional major public infrastructure expansion, the applicant may be required to contribute a proportional fair share of the cost of expansions.

**4-14-10 ANNEXATION AGREEMENTS**

- A. For all landowner petition-method annexations, an annexation agreement shall be entered into between the City and the applicant.

- B.** Annexation agreement shall be recommended by the planning and zoning commission to the governing body and adopted by the governing body as part of the ordinance setting forth the boundaries of the annexed area.
- C.** The agreement shall include, as appropriate:
- 1.** A list of property owners;
  - 2.** Reference to the way in which the annexation is in conformance with the Comprehensive Plan;
  - 3.** Provision for necessary off-site facilities;
  - 4.** Designation of land uses;
  - 5.** A phasing and staging plan;
  - 6.** Land to be dedicated to the city;
  - 7.** Impact fees;
  - 8.** Provision of city services, including fire and police protection, wastewater collection and sewer services, refuse disposal and street and road improvements;
  - 9.** Site design;
  - 10.** Archaeological site protection;
  - 11.** Provision of parks and open space and other items as agree to by the city and the applicant; and
  - 12.** Provision of water, consistent with adopted policies of the City, shall be addressed.
- D.** A revised annexation agreement must be approved if the master plan approved as part of the annexation application becomes invalid and a new master plan is approved.

## **ARTICLE 15 AMENDMENTS TO ZONING CODE AND MAPS**

### **4-15-1 MAP INTERPRETATION**

### **4-15-2 ZONING AND MAP AMENDMENTS**

### **4-15-3 PROTESTS AND APPEALS TO AMENDMENTS**

#### **4-15-1 MAP INTERPRETATION**

Where uncertainty of boundaries of zones or overlays on the official Zoning Map exists, the following rules shall apply:

- A.** Boundaries indicated as approximately following the centerlines of roads shall be construed to follow the lines; provided however, that where the centerline of a road as built, lies outside the road line, the zone boundary shall be deemed to follow the centerline of the road as built;

- B.** Boundaries indicated as approximately following the parcel lines shall be construed as following the parcel lines;
- C.** Boundaries indicated as approximately following the city limits shall be construed as following the city limits;
- D.** Boundaries indicated as following railroad lines or spur shall be construed to the midway between the main tracks;
- E.** Boundaries indicated as approximately following the centerlines of rivers, acequias, ditches, reservoirs or other bodies of water shall be construed to follow the centerlines of those bodies of water;
- F.** Boundaries indicated as parallel to, or extensions of, features listed in divisions (1) through (5) above shall be construed to follow those features. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- G.** Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (1) through (5) above, the Commission shall interpret the zoning boundaries; and;
- H.** Where a zoning boundary divides a parcel which was in single ownership at the date of adoption of this chapter, the Commission may, upon application by the landowner and pursuant to the process provided by (Article 4 – Quasi-legal changes), permit readjustment of that zoning boundary a maximum distance of 100 feet in any direction on the parcel, provided that the landowner shall demonstrate the following:
  - 1.** The boundary readjustment is consistent with the comprehensive plan map designation existing on the parcel;
  - 2.** The predominant zone includes at least 55% of the subject property, and the readjustment will not reduce in area the predominant zone which exists on the subject property.
  - 3.** The boundary readjustment shall follow existing or proposed property lines, public roads or acequias; and
  - 4.** That the boundary readjustment shall result in a single zone for the existing parcel or proposed parcels.

**4-15-2 ZONING AND MAP AMENDMENTS**

Follow instructions in 4-18-9 and 4-18-10 for rules on posting and notification.

~~A. Amendments to either the Code or Map may be initiated by the Commission, Council, a private landowner or a government agency.~~

~~B. After receiving a request for text amendment or zone map change, the Planning and Zoning Commission shall consider the request and make written recommendations to the City Council regarding the request. The Commission will consider all aspects of the request and balance the need for change against the impact of the request on affected properties. The Commission shall consider whether the proposed text or map amendments are consistent with the Comprehensive Plan. The request for a text amendment or zone map change, including the Commission recommendation will be brought before the City Council for Public Hearing. The City Council will decide based upon the evidence presented at the Public Hearing. The City Council may amend, repeal, or supplement any portion of the Code or Map.~~

A. After receiving a request for text amendment or zone map change, the Planning and Zoning Commission shall consider the request and make written recommendations, following an open public forum, to the City Council regarding the request. The Commission will consider all aspects of the request and balance the need for change against the impact of the request on affected properties. The Commission shall consider whether the proposed text or map amendments are consistent with the Comprehensive Plan. The request for a text amendment or zone map change, including the Commission recommendation will be brought before the City Council for Public Hearing. The City Council will decide based upon the evidence presented at the Public Hearing. The City Council may amend, repeal, or supplement any portion of the Code or Map.

B. Requests for change of either the Code or Map by a landowner will be forwarded to the City Planning and Zoning Commission. All pertinent data must be enclosed with the request. Additional information may be requested by the Commission. The Planning and Zoning Commission will schedule an open public forum with the applicant that will serve to enhance their understanding of the impact of the request. The Commission shall consider whether the proposed text or map amendments are consistent with the Comprehensive Plan. The Commission shall prepare a written recommendation to the City Council.

C. Fees for changes to the Zoning Map shall be charged to the party making the request.

D. Requests for a change in the text of the ordinance shall be accompanied by a deposit that will be returned pending approval of the change by the Council. If the Council does not approve the change, the fee shall not be returned.

**4-15-3 PROTESTS AND APPEALS TO AMENDMENTS**

- A. The City Council has the final authority for all amendments to the Zoning Code or Zoning Map.
- B. All meetings, hearings, appeals, or petitions to the district court shall be in accordance with Article 18 of this Code.

**ARTICLE 16 CELL TOWER/ANTENNA REGULATIONS**

- 4-16-1 PURPOSE**
- 4-16-2 AUTHORITY**
- 4-16-3 EXEMPTIONS**
- 4-16-4 PERMITS AND APPLICATION**
- 4-16-5 LOCATION/CO-LOCATION**
- 4-16-6 DIMENSIONAL REQUIREMENTS**
- 4-16-7 SETBACKS**
- 4-16-8 LIGHTING, SIGNAGE, SECURITY, ACCESS AND EQUIPMENT SHELTERS**
- 4-16-9 MAINTENANCE, MONITORING AND HAZARDOUS WASTE**
- 4-16-10 ABANDONED, DISCONTINUED OR REMOVAL**
- 4-16-11 APPEALS**
- 4-16-12 SMALL CELL TOWER (SEE SEPARATE ORDINANCE – “SMALL CELL TOWER”)**

**4-16-1 PURPOSE**

The purpose of this Code is to establish balanced regulations for the siting of personal wireless service facilities within the City of Rio Communities. The requirements of the Ordinance are intended to:

- A. Provide for siting of personal wireless service facilities while avoiding potential damage to abutting properties;
- B. To minimize any adverse impact on sensitive environmental areas as designated by the Department of Inland Fisheries and Wildlife;
- C. To maximize the use of approved or preexisting sites within the coverage area to reduce the number of personal wireless service facilities needed to serve the community; and
- D. To maintain to the greatest extent possible, the character of the existing site.
- E. To accommodate the communication needs of residents and businesses, while protecting the public health, safety and general welfare of the community.

**4-16-2 AUTHORITY**

Authority is established under Title 47 (U.S. Code), the Federal Communications Commission (FCC), the National Telecommunications and Information Administration (NTIA) and all federal and state regulations.

- A. Whenever a provision of this Ordinance conflicts with or is inconsistent with any other City ordinance or standard, the more restrictive provision shall apply.

**4-16-3 EXEMPTIONS**

- A. Amateur (Ham) radio stations licensed by the FCC.
- B. Parabolic antennas of 10 feet or less in diameter that are an accessory use of the property.
- C. Maintenance or repair of a personal wireless service facility and existing equipment provided there is no change in the height or other dimensions of the facility.
- D. Temporary personal wireless service facility in operation for a maximum period of 30 (thirty) days.

- E. Residential antennas that are an accessory to a residential dwelling unit, such as a television or radio antenna.

#### **4-16-4 PERMITS & APPLICATION**

- A. No person shall place, construct, erect, or expand a wireless service facility unless a permit has first been obtained from the City of Rio Communities Planning and Zoning Commission.
- B. An application for a personal wireless service facility siting permit shall be in accordance with all applicable FCC regulations and the New Mexico Construction Industries Division.
- C. An application for a personal wireless service facility siting permit must include the name, address, and telephone number of the applicant and any co-applicants, including landowners, as well as agents for the same.
- D. The applicant shall bear all costs incurred by the application process. A non-refundable application fee per the City's fee schedule shall be assessed for each proposed personal wireless service facility, payable to the City of Rio Communities.

#### **4-16-5 LOCATION/CO-LOCATION**

- A. Applicants seeking approval for siting of new personal wireless service facilities shall first evaluate the suitability of existing structures or approved sites. Only after finding that there are no suitable existing structures or approved sites for co-location, shall a provider propose a new ground mounted facility. Personal wireless service facilities that may be suitable for co-location include but are not limited to buildings, water towers, flag poles, telecommunication facilities, utility poles or existing personal wireless service facilities and related facilities.
- B. The applicant shall have the burden of proving that there are no co-location opportunities that are suitable to locate its personal wireless service facility.
- C. The applicant and owner shall allow other future wireless service carriers, using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on the personal wireless service facility they are proposing, unless satisfactory evidence is presented and the Commission concurs that technical constraints prohibit co-location. In addition, space shall be provided at no charge to public agencies that benefit the City; namely police, fire, ambulance, communication and highway, including Internet access if requested at the time of



review of the application by the Commission and as determined to be appropriate by the Commission.

#### **4-16-6 DIMENSIONAL REQUIREMENTS**

- A.** The height of any proposed personal wireless service facility shall not exceed one-hundred fifty (150) feet. The Commission may consider a request to add up to thirty (30) additional feet to the facility at a later date. At that time the applicant must provide the Commission with proof that the additional height is needed to accommodate an additional contracted tenant, as well as evidence of an acceptable design and co-location.
- B.** Subject to approval of a Commission permit, new personal wireless service facilities that are located on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles, may be increased in height, but in no event shall the resulting height be more than one-hundred fifty (150) feet.

#### **4-16-7 SETBACKS**

- A.** All personal wireless service facilities, guys and accessory facilities shall be setback from any residences or property lines by a minimum of 125% (percent) of the height of the facility; however, it may not be closer than 300 feet of a structure located on abutting property without written consent of the abutting property owner.
- B.** All personal wireless service facilities shall be galvanized steel or finished in a neutral color so as to reduce visual obstructiveness.
- C.** When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.

#### **4-16-8 LIGHTING, SIGNAGE, SECURITY, ACCESS ROADS AND EQUIPMENT SHELTERS**

- A.** Personal wireless service facilities shall not be artificially lit, except for manually operated emergency lights for use when operating personnel are on site.
- B.** A security fence or wall of not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.

- C. No advertising signs or signage is permitted on personal wireless service facilities, except for signs that are needed to identify the property and the owner and to warn of potential hazards.
- D. Road access to the personal wireless service facility shall be limited to a single roadway, which must be designed to harmonize with the topographic and natural features of the site by minimizing filling, grading, excavation, or similar activities which result in unstable soil conditions and soil erosion. The access roadway must follow the natural contour of the land and should not involve excessive grading or tree removal. Curvilinear roads shall be used as access roads to prevent direct line of site from the town road access point to the tower site. Existing vegetation should be maintained to the extent practical. All practical steps must be taken to prevent a visible scar up or across a ridgeline.
- E. The base of the tower shall not be located in a wetland, floodplain, or drainage area.
- F. At the site, the design of the facility and accessory structures shall use materials, colors; textures, screening and landscaping that will blend the personal wireless service facility to the natural setting as much as possible. The required security fence shall also use materials that blend into the natural setting as much as possible. The Planning and Zoning Commission will determine if the style of fencing and/or landscape buffer is compatible with the surrounding area.

**4-16-9 MAINTENANCE, MONITORING AND HAZARDOUS WASTE**

**A. Maintenance**

The owner and/or operator of the personal wireless service facility shall maintain the structure in good condition. Such maintenance shall include, but is not limited to, painting, structural integrity of the mount and security barrier, any buffer areas, fencing and landscaping.

**B. Monitoring**

1. On an annual basis, the personal wireless service facility owner shall provide the City with evidence of compliance with federally mandated safety levels for radio frequency electromagnetic fields and radio frequency radiation exposure levels, to include copies of any reports filed with the FCC.
2. The personal wireless service facility owner shall arrange for a licensed structural engineer to conduct regular inspections of the personal wireless service facility's structural integrity and safety at least every five years. A report of the inspection results shall be submitted to the Commission.

**C. Hazardous Waste**

1. No hazardous waste shall be discharged on the site of any personal wireless service facility.
2. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials and the owner or operator of the personal wireless services facility shall comply with all local, state and federal laws, codes, rules regulations, orders and ordinances in the handling and disposal of such materials.

**4-16-10 ABANDONED, DISCONTINUED OR REMOVAL**

- A. A personal wireless service facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned.
- B. The City shall notify the owner of an abandoned facility in writing, via certified mail, return receipt requested, ordering the removal of the facility within 180 days of receipt of the written notice.
- C. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the City that the facility has not been abandoned.
- D. If the owner fails to show that the facility is not abandoned, the owner shall have one-hundred fifty (150) days to remove the facility.
- E. If the facility is not removed within that time period, the City shall remove the facility at the owner's expense and the City may draw upon the bonded mover to defray the costs of removal of the facility.
- F. Removal shall include, but not be limited to, antennas, mounts, equipment shelters and security barriers.
- G. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and re-establishment of any vegetation.

**4-16-11 APPEALS**

- A. Any person aggrieved by a decision of the Commission under this Code may appeal the decision as an administrative appeal within thirty (30) days after receipt of the notification. See Section 4-18-6 for process and procedure.

- B. Administrative appeals submitted under this Code shall be subject to the standards and procedures established by the City of Rio Communities. See Article 4-18-6.

**4-16-12 SMALL CELL TOWERS (SEE SEPARATE ORDINANCE TITLED “SMALL CELL TOWERS”)**

**ARTICLE 17 SOLAR AND WIND TURBINES**

- 4-17-1 PURPOSE**
- 4-17-2 DESIGN STANDARDS**
- 4-17-3 RESTRICTIONS**
- 4-17-4 COMPLIANCE**
- 4-17-5 ENVIRONMENTAL IMPACT**
- 4-17-6 SOLAR ENERGY COLLECTION SYSTEMS**
- 4-17-7 WIND TURBINE ENERGY COLLECTION SYSTEMS**

- 4-17-1 PURPOSE**

The purpose of this Article is to encourage safe and effective use Alternative Energy Producing Systems (e.g. solar and wind turbines) for both residential and commercial

applications; and establish minimum requirements for the placement, construction, and modification of these systems and related support equipment.

#### **4-17-2 DESIGN STANDARDS**

##### **A. Building Permit**

A building permit shall be required for all Alternative Energy Systems. Applications shall be submitted to the Commission for review and approval. All applications shall include the following documentation:

- 1. Engineered Drawings:** A complete set engineered drawings, stamped and signed by a professional engineer, registered and licensed to practice in New Mexico, of the Alternative Energy System that clearly details the tower, base, footings, supports, and foundation as provided by the manufacturer. The engineered drawings shall include production capacity of Alternative Energy Systems and wind loads for Wind Energy Systems.
- 2. Site Plan:** The site plan shall include a date, North arrow and appropriate scale and dimensions to reflect adequately the details necessary to describe the proposed location and use; locations of surrounding structures, existing property lines, fences, public or private rights-of-way, public roads, and all utilities (both buried and overhead).
- 3. Utility Notification:** The building permit application shall include documentation that the relevant electric utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- 4. Fire Department Approval:** The building permit application shall include documentation of review and approval by the Rio Communities Fire Department in accordance with International Fire Code.

#### **4-17-3 RESTRICTIONS**

- A.** The energy (power) produced by any solar collection system (photovoltaic) erected on a residential or business property shall be used exclusively for that resident or business and shall not be "sold" to another resident or business except Public Service of New Mexico (PNM) or similarly regulated New Mexico Public Utility Company.
- B.** No Wind Turbine Energy Collection System shall be erected on any residential or business property that is within three thousand (3,000) feet in line of sight to any other residential or business property.

#### **4-17-4 COMPLIANCE**

- A.** It shall be unlawful for any person to construct, install, alter or operate an Alternative Energy System that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this Code.
- B.** The construction and operation of any Alternative Energy Systems shall be consistent with all applicable federal, state and local requirements, including all applicable safety, construction, building, environmental, electrical, FCC communications and FAA aviation requirements. Alternative Energy Systems shall comply in all respects with building and electrical codes contained in the International Building Code, New Mexico Construction Industries Division and National Electric Code as adopted by the City of Rio Communities.
- C.** All Alternative Energy Systems shall be designed to be compatible with the character of the surrounding neighborhood.

#### **4-17-5 ENVIRONMENTAL IMPACT**

- A.** Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the Alternative Energy System and is otherwise prescribed by applicable laws, regulations and ordinances.
- B.** Once the system is operational, any land that has been disturbed and is not necessary for the functioning of the system shall be reclaimed with natural vegetation immediately.

#### **4-17-6 SOLAR ENERGY COLLECTION SYSTEMS**

The installation of any solar energy collection system shall comply with NMSA 1978, § 3-18-31(Municipal Restriction on Solar Collectors) and NMSA 1978, § § 4-55C-1 through 8 (Solar Energy Improvement Special Assessment Act).

##### **A. Roof Mounted Solar Energy Collection Systems**

- 1.** All residential roof mounted solar energy collections systems shall comply with the maximum height requirements in the applicable zoning district. Where maximum height is measured at the midpoint between eaves and roof peak and where the roof peak exceeds the maximum building height, the Solar Energy Collection System shall not exceed the height of the roof peak.
- 2.** Roof-mounted Solar Energy Collection Systems shall be flush-mounted and parallel to the roof surface to the extent possible. Solar Energy Collection Systems may be bracket mounted or tilted on flat or pitched roofs to improve

efficiency but shall have at least one (1) side of the array within twelve (12) inches of the roof surface.

**B. Passive Or Building-Integrated Solar Energy Collection Systems**

Passive or Building-Integrated Solar Energy Collection Systems are exempt from the requirements of this section and shall be regulated as any other building element.

**C. Ground-Mounted Solar Energy Collection Systems**

1. Ground-mounted Solar Energy Collection Systems shall not exceed fourteen (14) feet in height.
2. Ground-mounted Solar Energy Collection Systems in Residential zoning districts shall be limited to the side or rear yard, shall be treated as accessory structures and shall adhere to all applicable setback requirements. Additionally, all such systems shall have a protective barrier or fence five (5) feet in height around the yard, lot or collection area.
3. Ground-mounted Solar Energy Collection Systems in non-residential zoning districts shall be limited to the side or rear yard and shall not encroach into any required setback. Additionally, all such systems shall have a protective barrier or fence at least six (6) feet in height around the yard, lot or collection area.
4. All exterior electrical and/or plumbing lines shall be placed in a conduit, marked, and buried below the surface of the ground in accordance with applicable codes. Electrical lines may be placed overhead but only near points of interconnection to the electric grid.

**4-17-7 WIND TURBINE ENERGY COLLECTION SYSTEMS**

**A. Height Requirements**

1. The height of Small Wind Energy Systems shall not exceed eighty (80) feet, measured at the highest point of the turbine blade or other component. In Agricultural or Manufacturing zones, the Small Wind Energy System shall not exceed one-hundred and twenty (120) feet.
2. If the Small Wind Energy System is attached to a building or structure, this measurement shall include the height of the building or structure.
3. The Small Wind Energy System shall comply in all respects with Federal Aviation Regulations Part 77, and any other applicable Federal Aviation Administration requirements.

**B. Minimum Blade Height**

The minimum height of the lowest point of a turbine blade shall be fifteen (15) feet above the ground and ten (10) feet above or distant from any roof surface.

**C. Setbacks**

1. Small Wind Energy Systems shall be set back at a distance equal to or greater than one hundred percent (100%) of the total height of the system from all overhead utility lines, property lines, and public roads or public rights-of-way.
2. If the Small Wind Energy System is installed on a roof, the total height is equal to the roof height and tower height.
3. Guy wires and other support devices shall be set back at least five (5) feet from all property lines. Guy wires and other support devices shall be set back at least twenty (20) feet from any public right-of way.
4. Small Wind Energy Systems shall not be allowed in the required front yard setback.

**D. Access**

1. No tower shall have a climbing apparatus within twelve (12) feet of the ground.
2. All access doors or access ways to towers and electrical equipment shall be accessible by authorized personnel only. Towers with lattice within twelve (12) feet of the ground shall be enclosed within a secured fence or wrapped by a protective metal mesh up to twelve (12) feet and sufficient to prevent climbing.

**E. Feeder Lines**

All exterior electrical lines shall be placed in a conduit, marked and buried below the surface of the ground in accordance with applicable codes. Electrical lines may be placed overhead only near points of interconnection to the electric grid.

**F. Lighting**

Illumination or lighting on the Small Wind Energy System shall be prohibited except as required and allowed by the Federal Aviation Administration.

**G. Sound**

The Small Wind Energy System and associated equipment shall not exceed fifty (50) dB(A) for any period of time under normal operating conditions as measured from the nearest neighboring inhabited structure.

**H. Signage And Advertising**



Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the Small Wind Energy System, utility, and safety signs. No other signage shall be permitted.

**I. Color And Finish**

The Small Wind Energy System shall remain painted or finished in the color or finish that was originally applied by the manufacturer, or shall be painted gray, beige or white. Rust, corrosion or peeling paint on any component shall be repaired and repainted.

**ARTICLE 18 PLANNING, ZONING LAND USE COMMISSION MEETINGS AND HEARINGS**

- 4-18-1 PUBLIC MEETINGS AND HEARINGS**
  - 4-18-2 BUSINESS OF THE COMMISSION**
  - 4-18-3 CHANGE OF ZONING OR MAPS**
  - 4-18-4 COMMISSION ZONING RECOMMENDATIONS**
  - 4-18-5 CITY COUNCIL MEETINGS AND DECISIONS**
  - 4-18-6 APPEALS TO COMMISSION OR CITY COUNCIL**
  - 4-18-7 APPEAL SUBMISSION AND DECISION**
  - 4-18-8 PETITION TO THE DISTRICT COURT**
  - 4-18-9 HEARING POSTING**
- NOTIFICATION OF ADJOINING PROPERTY OWNERS**

**4-18-1 PUBLIC MEETINGS AND HEARINGS**

- A.** In accordance with the City’s Open Meeting Act (~~Resolution 001-13 or most current version~~), the Planning and Zoning Commission ~~shall~~ **may** hold regular bi-monthly

meetings (first and third Thursday of each month). These meetings shall be open to the public and notice by publication shall be given at least six (6) calendar days in advance of a regular meeting.

- B. Publication shall mean, either notification by newspaper that maintains an office within the City, or barring that; posting conspicuously, a notice at six (6) public places within the City, one of which shall be the Office of the City Clerk.
- C. Special Meetings, ~~in conjunction with regular meetings~~ may be scheduled as deemed necessary by the Commission. Public notification of Special Meetings shall be by publication as described in Subsections A and B of 4-18-1, except, only three (3) days prior notice is required.

#### **4-18-2 BUSINESS OF THE COMMISSION**

- A. The Commission may decide various administrative items, home occupation permits, ~~variances~~, conditional ~~or special~~ use and historic district permits; ~~and applications for subdivisions, vacation of rights of way and annexations.~~ and
- B. All such business as described in Subsection A of 4-18-2 and other business as deemed necessary by the Commission shall be held conducted in an open meeting public forum before the Commission votes on a recommendation to the City Council.
- C. The Commission may establish reasonable rules of participation and decorum for open public forums.

#### **4-18-3 CHANGE IN ZONING OR MAPS**

- A. No zoning regulation, restriction, or boundary shall be recommended for change or repeal by the Commission to the City Council until after a an open public hearing forum is held where all parties in interest and residents interested people shall have an opportunity to be heard.
- B. Whenever a change listed in A. above, follow instructions in 4-18-9 and 4-18-10 for instructions for both Planning and Zoning Commission and City Council actions.

#### **4-18-4 COMMISSION ZONING RECOMMENDATIONS**

- A. All recommendations to the City Council shall be made in accordance with this Zoning Code and the Comprehensive Plan of Rio Communities. Article 8 (Zoning Code Enforcement) of this Code will serve as a guide.
- B. The minutes of the Planning and Zoning meeting will **accompany** ~~serve as~~ a recommendation to the City Council.
- C. The Commission may make recommendations to the City Council on matters such as variances, special use permits, vacation of rights of way and annexations.

**4-18-5 CITY COUNCIL MEETINGS AND DECISIONS**

- A. Follow instructions in 4-18-9 for posting instructions and 4-18-10 for notification instructions, if appropriate.
- B. Publication shall mean, either notification by newspaper that maintains an office within the City, or barring that; posting conspicuously, a notice at six (6) public places within the City, one of which shall be the Office of the City Clerk.
- C. Approval by the City Council, when considering recommendations from the Commission for any change in zoning, regulation, restriction, **variance, special use permit,** or boundary shall require a simple majority vote of a quorum of the City Council.
- D. If an appeal to any decision concerning a change in zoning, regulation, restriction, or boundary made by the City Council is not filed within fifteen (15) calendar days of that decision, the decision of the City Council shall stand.

**4-18-6 APPEALS TO COMMISSION OR CITY COUNCIL**

- A. Any aggrieved person, officer, department board or bureau of the City that is affected by a decision of an administrative officer, commission, or council in the administration or enforcement of this Code, or any other resolution, rule, or regulation adopted pursuant to Sections 3-21-1 through 3-21-12 of the New Mexico Statutes 1978, as amended, may appeal such decision to the Commission or to the City Council, as appropriate.
- B. Any appeal must be initiated in writing within fifteen days (15) calendar days after all other procedures authorized by this Code have been exhausted.

- C. Appeal of any action of the Code Enforcement Officer or his/her designee is to the Commission. The Commission may decide such appeals or refer the appeal to the City Council with its recommendation for action. The decision of the Commission may be appealed to the City Council.
- D. Appeal of all other matters concerning zoning shall be to the City Council.

#### **4-18-7 APPEAL SUBMISSION AND DECISION**

- A. Submission for appeal shall be in writing and filed within fifteen (15) calendar days of the City Council's action or decision being appealed, by filing a Notice of Appeal with the City Clerk or if available, a with a copy to the Code Enforcement Officer. An appropriate filing fee shall be charged to the Appellant. See Appendix B for fee schedule.
- B. The appeal shall state specifically the claim, error or abuse and clearly reference the applicable rule within this Code. The appeal shall also state a remedy.
- C. The appeal, once filed, shall be marked for scheduling and placement on the agenda of either the Commission or the City Council.
- D. The City Mayor and Commission Chairperson shall be notified of the appeal.
- E. If the appeal clearly presents evidence that an error or incorrect decision has been made by a Code Enforcement Officer or the Commission, or the City Council, the decision may be over-ruled by a simple majority of a quorum of the City Council. The City Council may make any remedy that it deems appropriate to the situation. All decisions by the City Council are final.
- F. A stay of any proceeding shall occur upon receipt of an appeal unless such a stay would cause serious damage to people or property. Certification of this negative impact shall be submitted to the City Council by the Enforcement Officer or Commission involved in the decision.
- G. A decision by the City Council on any appeal shall be rendered no later than sixty (60) days from the date of filing. The appellant shall be notified of the decision via certified mail and the decision shall be published.

#### **4-18-8 PETITION TO THE DISTRICT COURT**

- A. A petition may be filed to the District Court by any person who is aggrieved by a decision of any administrative officer, department, officer or board of the City in the administration or enforcement of this Code or any other rule or regulation adopted pursuant to Sections 3-21-1 through 3-21-12 of the New Mexico Statutes 1978, as amended.
- ~~B. Such petition shall state what is illegal, in whole or in part, including the grounds for the illegality.~~
- B. Appeals to the District Court are governed by Rule 74 of the New Mexico Rules of Civil Procedure.
- C. Such petition must be filed within thirty (30) calendar days after such decision is entered into the City records of the City Council and comply with all applicable statutes and rules.

**4-18-9 HEARING NOTICE**

**A. PLANNING AND ZONING ~~HEARING POSTING~~ COMMISSION NOTICE**

~~Commission consideration of the proposed issue shall be conspicuously posted for public scrutiny and comment at six (6) public locations throughout the City and on the cities webpage. After fifteen (15) days of posting, the Planning and Zoning Commission shall have a public hearing and then may vote on the issue. The Commission may approve, approve with conditions, deny, continue or defer the request. If passed, it will be forwarded to the City Council for consideration. In the case of approval, deferral or continuance, the City Council shall make a decision within 90 days of the initial Planning and Zoning hearing.~~

~~NM § 3-21-6 (2016)~~

1. Applications for special use permits, variances, zoning ordinance text amendments, annexation, or zoning map amendments require consideration by the Planning and Zoning Commission prior to submission to the City Council for Final Approval. Notice of Commission action or consideration shall be conspicuously posted for public scrutiny and comment at six (6) public locations throughout the City and on the city webpage. Notice of time and place of the open public forum shall be published at least ~~fifteen~~ six days prior to the date of the open public forum. Following the open public forum, the Commission may make recommendations to the City Council for final action.

2. The Commission shall consider all aspects of the request and balance the need for change against the impact of the request on affected properties. The Commission shall consider whether the proposed special use permit, variance, text or map amendments are consistent with the Comprehensive Plan. The Commission will prepare its written report including recommendations to the City Council.

3. Applications for such matters as conditional use permits, vacation of rights of way, and other matters within the authority of the Commission require notice and an open public forum before the Planning and Zoning Commission. Notice of Commission action or consideration shall be conspicuously posted for public scrutiny and comment at six (6) public locations throughout the City and on the city webpage. Notice of time and place of the open public forum shall be published at least fifteen days prior to the date of the open public forum. Following the open public forum, the Commission may approve, approve with conditions, deny, postpone, or defer action on any other matters within its jurisdiction.

#### **B. CITY COUNCIL HEARING ~~POSTING~~ NOTICE**

1. Application for special use permits, variances, zoning ordinance text amendments, annexation, or zoning map amendments require consideration by the Planning and Zoning Commission prior to submission to the City Council for Final Approval.
- ~~2. Notice of the Commission meeting shall be in accordance with Section 4-18-9.A above. The Commission shall consider all aspects of the request and balance the need for change against the impact of the request on affected properties. The Commission shall consider whether the proposed special use permit, variance, text or map amendments are consistent with the Comprehensive Plan. The Commission will prepare its written report including recommendations to the City Council.~~
2. Upon receiving the recommendation of the Planning and Zoning Commission on any special use permit, variance, zoning ordinance text amendments, annexation, or zoning map amendments, the City Council will convene a public hearing to consider the recommendations of the Planning and Zoning Commission.
3. Notice of the time and place of the public hearing before the City Council shall be published, at least fifteen days prior to the date of the public hearing City Council.

4. Whenever a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right of way, of the area proposed to be changed by zoning regulation.

5. Whenever a change in zoning is proposed for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners, as shown by the records of the county treasurer, of lots or [of] land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right of way, of the area proposed to be changed by zoning regulation.

4. The City Council shall conduct a public hearing on the proposed special use permit, variance, text or map amendment. Following the public hearing, the City Council may approve, approve with conditions, deny, ~~continue postpone~~, or defer the request.
5. The City Council shall issue a written order including its Findings of Fact based upon the record of the public hearing conducted by the Council.

#### 4-18-10 NOTIFICATION OF ADJOINING PROPERTY OWNERS

- A. It shall be the responsibility of the petitioner to promptly notify members of the public within fifteen (15) days of the scheduled hearing, any landowner whose property is located within one hundred (100) feet of the proposed land use regulation zoning change or variance issuance, by posting a sign provided by the City at the property line of the subject property closest to a street within fifteen (15) days of the scheduled hearing. The sign shall state the date, time, and location of the hearing and a general description of the requested subdivision action. Failure on the part of the petitioner to properly post this notification may jeopardize the sub-dividers procedure. NM53-21-6 (2016)
- B. ~~Any zoning request that requires a confirmation by the Planning and Zoning Commission and/or the City Council requires a Public Hearing.~~

## B. Notice Required

~~a. If the zoning change covers 1 block or less, certified notification with return receipt requested must be sent to all landowners within 100 feet (excluding rights of way) of the annexation or zoning change. If the annexation or zoning change is more than 1 lot in size, first class notifications must be mailed to all landowners within 100 feet of the annexation or zoning change, excluding right of ways. Any undelivered mail will be followed by certified notification with return receipt requested. County Treasure records are the final source of all mailing lists. The mailing will be performed by the City staff, but all expenses will be reimbursed by the person requesting the annexation or zoning change. NM x 3-21-6 (2016)~~

~~b. If the owners of twenty percent or more of the area of the lots and (of) land included in the area proposed to be changed by zoning regulation or within one hundred feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the governing body of the municipality. NM x 3-21-6 (2016)~~

1. If the zoning change covers one (1) block or less, certified notification with return receipt requested must be sent to all landowners within one hundred (100) feet (excluding rights-of-way) of the annexation, zoning regulation, or zoning change.

2. If the annexation or zoning change is more than one (1) block in size, first class notifications must be mailed to all landowners within one hundred (100) feet of the annexation or zoning change, excluding right of ways.

3. Any undelivered mail will be followed by certified notification with return receipt requested. County Treasurer records are the final source of all mailing lists. The mailing will be performed by the City staff, but all expenses will be reimbursed by the person requesting the annexation or zoning change.

C. If the owners of twenty percent (20%) or more of the area of the lots and (of) land included in the area proposed to be changed by zoning regulation or within one hundred feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the governing body of the municipality.



## City of Rio Communities

### Code of Ordinances

#### APPENDIX A

##### Definitions

1. **A-Weighted:** A unit of measurement, weighting sound pressure as measured for determining the human response to sound as described in ANSI 1.4, 1983.
2. **Abandoned well:** A wellhead that has been permanently discontinued.
3. **Access:** A required means or method for either pedestrians or vehicles to enter (ingress) or exit (egress) a parcel, or dwelling.
4. **Accessory Building & Use:** Any building or structure, subordinate to and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land and is not attached by any part of a common wall or common roof to the main building. Includes containers, portable garages, carports, storage buildings and temporary type storage units (up to 90 days-may be extended upon review by Commission).
5. **Accessory Dwelling Unit (ADU):** Any ancillary or secondary living unit that has a separate kitchen, bathroom or sleeping area, existing either within the same structure or on the same lot as the primary dwelling unit (also known as accessory apartments, garage apartments, granny flats, or mother-in-law flats).
6. **Accessory Living Quarters:** Any living quarters established within an allowed accessory structure that is temporary in support of a legitimate hardship or medical necessity; is not rented and does not exceed five-hundred (500) square feet of floor space.
7. **Administrator (Staff or Planning Staff):** Any person or persons assigned by the City whose primary responsibility is the administration or enforcement of this Code (the term "staff" or "planning staff" is sometimes used interchangeably with this term).
8. **Adult:** As a noun, any person over the age of eighteen (18) or as an adjective, any descriptive moniker given to the substantial or significant commercial sale of entertainment stock-in-trade products (e.g. books, magazines, periodicals, films, or movies) that are intended for or befitting exclusive use by adults and prohibited to minors.
9. **Adult Entertainment Establishment:** A business that either directly or indirectly provides sex-related entertainment products and service solely to an adult.
10. **Affordable Housing:** Based on Housing and Urban Development (HUD) regulations, any housing where occupying household pays no more than thirty percent (30%) of their monthly income for either the monthly mortgage or rent, including the cost of utilities.
11. **Agent:** Any person authorized by notarized letter and signed by the property owner to represent same.
12. **Ambient Light:** Any form of surrounding or environmental light such as natural sunlight, or artificial light emanating from nearby streetlights, or any other near-by light source.
13. **Amendment:** See Legislative Amendment and Quasi-judicial Amendment

14. **Animal Sanctuary or Shelter:** Any non-profit facility for the short or long-term care and custody of animals that may include lost pets, owner released pets, rescued animals (cruelty); such shelter may be designated as “no-kill” or one that practices selective euthanasia.
15. **Antenna:** Any equipment designed to transmit or receive electronic signals.
16. **Antenna Array:** One or more whips, panels, discs or similar devices used for the transmission or reception of radio frequency signals that may include omni-directional antenna (whip), directional antenna (panel) and parabolic antenna (disc). An Antenna Array does not include any support structure.
17. **Apparent Movement:** A perceptual phenomenon known as the stroboscopic effect or movement, in which a stationary object is first seen briefly in one location and, following a short interval, is seen in another location (e.g. watching a film in which separate stills are viewed in a continuous run that creates the illusion and appearance of motion, or when rotating spokes in a wheel appear to move backwards).
18. **Attached Wireless Communication Facility (WCF):** An antenna array that is attached or affixed to an existing building or structure (including but not limited to a utility pole, sign or water tower), along with any transmission cables and accompanying pole or device that attaches or affixes the antenna array to the existing building or structure.
19. **Automobile Repair Garage:** A facility that provides for the repair and maintenance of motor vehicles, including any mechanical and body work.
20. **Automobile Service Station:** A facility that provides the retail sale of motor fuels and lubricating accessories that may include the service and repair of motor vehicles as an accessory use. An Automobile Service Station is not a repair garage or a body shop.
21. **Automobile Wrecking Yard (Wrecking Yard):** An area of land used for the storage, wrecking, dismantling, disassembling or sale of inoperable motor vehicles, trailers or farm equipment, or associated parts.
22. **Banking, Financial or Credit Union:** Any privately owned or state or federally chartered bank, saving association, credit union, financial or industrial loan company engaged primarily in the business of selling consumer goods that cashes checks or issues money orders and is incidental to its main purpose or business and is offered as a service to customers, but excludes any establishment whose primary purpose is to provide cash advances, pay day loans, pay day advances, and similar services.
23. **Bar:** Any establishment where the principal business is the service of alcoholic beverages.
24. **Barn:** See Accessory Building
25. **Basal Cover:** The vegetative cover or extent of cover found at the crown or base of a plant.
26. **Bed And Breakfast:** Any small lodging establishment that offers overnight accommodation and breakfast. A property is considered to be a bed and breakfast if it has at least 2 spaces for rent.

27. **Berm:** An earthen wall, shelf, or raised barrier separating two areas that serve as a border barrier. A Berm is also used to control erosion and sedimentation by reducing the rate of surface runoff.
28. **Billboard:** An off-premises sign or sign assemblage maintained as advertising rental space by a business enterprise.
29. **Boarding House:** Any residential use consisting of at least one dwelling unit together with more than two rooms that are rented but that do not constitute separate dwelling units. A boarding house is distinguished from a tourist home in that the former is designed to be occupied by longer-term residents as opposed to overnight or weekly guests.
30. **Body Art:** Any form of tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico Medical Board.
31. **Body Art Establishment:** Any establishment that engages in the business of tattooing and or branding and body piercing of human beings, including scarification. A permanent picture, design or other marking made on the skin by pricking and staining it with indelible dye to exclude the application of permanent makeup in a Salon setting with appropriate equipment and the piercing of ears with the use of a piercing gun.
32. **Building:** Any structure having a roof supported by columns or walls for the shelter, support or enclosures of persons or personal property. A permanent structure having a fixed base on, or fixed connection to the ground.
33. **Building Height:** The vertical distance from the finished grade to the highest point of the roof.
34. **Building Inspector:** Any official designated by the county to enforce the applicable federal, state and county building codes.
35. **Building Permit:** The certificate of compliance issued by any duly authorized municipal, county or state administrator.
36. **Carport:** Any structure designed to provide overhead coverage for standard-size passenger vehicles and trucks, unenclosed on at least three sides, designed to complement the architecture of the adjoining neighborhood as much as possible.
37. **Check Cashing/Pay Day Load Establishment:** Any establishment whose primary purpose is to provide cash advances, pay day loans, pay day advances and similar services. It does not include a state or federally chartered bank, saving association, credit union, or industrial loan company, retail sellers engaged primarily in the business of selling consumer goods that cashes checks or issues money orders and is incidental to its main purpose or business and is offered as a service to customers.
38. **Child Care Home:** Any home where not more than five orphaned, abandoned, dependent, abused, or neglected children reside, together with not more than two adults, who supervise such children.
39. **Child Care Institution:** Any institutional facility housing more than five orphaned, abandoned dependent, abused, or neglected children.
40. **Circulation Area:** Any area used to access parking or loading areas or other facilities on a lot.

41. **Clear (line of) Sight Triangle:** A triangle formed by the intersection of two curbs or the edge of a city-maintained roadway measured back from the intersection or roadway twenty-five feet along the curb line or city roadway. A continuous unobstructed view of twenty-five (25) feet in both directions of the intersection or roadway to a height of 3 feet or more must be maintained.
42. **Clerk:** The Rio Communities Clerk or the Clerk's duly authorized representative.
43. **Clinic:** Any place used for the care, diagnosis or treatment of sick, ailing, infirm or injured persons and those who are in need of medical or surgical attention, but who are not provided a room or kept overnight on the premises as an in-patient.
44. **Club or Lodge:** Any facilities operated for non-profit that provides for a social, educational, recreational, scientific, benevolent or charitable purpose, where membership is required for participation. A Club does not include a public or private kindergarten, school, college or research institution, daycare or rehabilitation facility of any kind.
45. **Cluster Subdivision:** A form of residential development for a single-family subdivision that permits a reduction in lot area provided there is no increase in the number of lots permitted by the zoning district and the undeveloped land resulting from the lot reduction is devoted to open space.
46. **Collector Street:** Any street that serves as a connection between a major or secondary thoroughfare and several minor streets. The term includes the principal entrance streets of a residential development and streets for major circulation within such a development.
47. **Collocation:** Use of a common wireless communication facility (WCF) or common support structure by 2 or more wireless communications license holders or by 1 wireless communications license holder for more than 1 type of communications technology, or, placement of a WCF on a structure owned or operated by a utility or other public entity, or, placement of an attached WCF.
48. **Commercial:** The exchange of property, service, or idea for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit. Primarily intended for or directed towards commercial advantage or monetary compensation. The definition is intent-based and intentionally flexible in anticipation of the many possible factual situations and business models that may exist now but unknown or develop later.
49. **Commercial Kennel:** Any building or land designed or arranged for boarding dogs, cats, and other household pets and where grooming, breeding, boarding, training, or selling animals is conducted in the Commercial Zone.
50. **Commission:** The City of Rio Communities' Planning and Zoning Commission.
51. **Community Water Supply System:** Any public or private water supply, treatment, storage, transmission and distribution system and all appurtenant improvements as approved by the State of New Mexico.
52. **Comprehensive Plan :** The generalized, coordinated land-use map and policy statement adopted by Rio Communities as the Rio Communities Comprehensive Plan

and all subsequent amendments thereto that covers all unincorporated land in Valencia County and addresses all functional and natural activities and systems in the unincorporated land. Land includes surface water. Coordinated means the needs of all government, semi-public and private agencies, and the citizens of Valencia County have been considered and accommodated to the greatest extent possible.

53. **Conditional Use:** Any use not permitted outright in a zoning district but may be allowed by permit, subject to review for compatibility with existing and anticipated future needs. Conditional Use normally requires yearly review of conditions for compliance by the Commission. Non-compliance may lead to revoking the permit.
54. **Condominium:** One or more structures containing two or more dwelling units each that are sold to and held under individual ownership by the occupants and may or may not include ownership of the land upon which the dwelling units are situated.
55. **Construction:** The placement of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing structure has substantially begun preparatory to rebuilding; the excavation or demolition or removal shall be deemed to be construction, provided that work shall be carried on diligently.
56. **Contamination:** The presence of any harmful substance that is likely to unreasonably injure human health, animal or plant life, property, or public welfare.
57. **Contiguous:** Abutting or touching and may separate by nothing more than a ditch, canal, or right-of-way.
58. **Convenience Store:** A retail store that is designed and stocked to sell primarily food, beverages and other household supplies to customers who purchase only a relatively few items.
59. **Cool Season Perennial:** Selections or combinations of Kentucky bluegrasses, perennial ryegrasses, fine fescues and tall fescues that require large volumes and or frequent applications of water throughout its life.
60. **Cord (Wood):** A cord is the amount of wood that, when "ranked and well stowed" (arranged so pieces are aligned, parallel, touching and compact), occupies a volume of 128 cubic feet. This corresponds to a well stacked woodpile 4 feet high X 8 feet long X 4 feet (deep; or any other arrangement of linear measurements that yields the same volume.
61. **Council:** the City council of the City of Rio Communities.
62. **County:** The unincorporated area of Valencia County, New Mexico.
63. **Day Care Center:** Any child care arrangement that provides day care on a regular basis for more than four hours per day for more than twelve children. All state license requirements must be met.
64. **Day Care Facility:** An establishment or facility that has the primary function of providing care, services and supervision to children. Synonymous with Day Care Center.
65. **Day Nursery:** Any institution, establishment or place in which 3 or more children not of common parentage, under the age of 6 years, are commonly received for a period or

periods not exceeding 12 hours for the purpose of being given board, care or training apart from their parents or guardians for compensation or reward.

66. **dB (A):** Unit of sound level expressed in decibels (dB) as measured on the A-weighted scale.
67. **Density Bonus:** A density increase over the allowable maximum residential density.
68. **Department:** The Rio Communities Code Enforcement Department.
69. **Designated Use Permit:** A permit issued by the City council that authorizes the recipient to make use of property in accordance with the requirements of this title as well as any additional requirements imposed by the planning and zoning commission.
70. **Developer:** A person who is responsible for any undertaking that requires a zoning permit, conditional use permit, designated use permit, subdivision plat approval or sign permit.
71. **Development:** Any man-made change in improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading paving, excavation or drilling operations.
72. **Discharges:** Any measurable, natural or man-made release of water, sediment or other particulates into the environment.
73. **Disturbed Area:** The area within the property that is altered by the mining and related activities, including but not limited to road, utility and facilities construction, and materials stockpiling areas.
74. **Drainage Plan:** A detailed plan prepared by a New Mexico registered professional engineer competent in the specialization of surface hydrology and hydraulics that specially addresses drainage of storm waters and other liquids on a particular area of surface or subsurface.
75. **Dwelling:** A building or portion thereof designed or used exclusively for residential occupancy, including single-family, two-family and multiple-family dwellings, but not including hotels, boarding and lodging houses.
76. **Dwelling Unit (Conventional):** A single-family detached dwelling unit that is installed on a permanent foundation and is either: 1) A site-built unit constructed in accordance with the standards of the New Mexico Uniform Building Code; or 2) Multi-Section Manufactured Home or Modular Home that is a single-family dwelling with a heated area of at least 36 (thirty-six) by 24 (twenty-four) feet and at least eight hundred sixty-four (864) square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and with the regulation made pursuant thereto relating to permanent foundations.
77. **Dwelling (Multi):** A structure designed or modified to contain two or more dwelling units.
78. **Dwelling (Single):** A detached structure containing one dwelling unit.

79. **Easement:** Rights granted to Public Utilities for ingress and egress to serve water, sewer, telephone/cable, gas and electric lines or the right granted to a landowner for ingress and egress to property by purchase, deed, or adverse possession or any other legal means.
80. **Equipment Facility:** Any accessory structure used to contain ancillary equipment for WCF that may include cabinets, small shelters, pedestals or other similar structures.
81. **Exploration:** Any activity related to the determination of the geologic and economic extent of a sand and gravel or mineral resource and includes both non-surface and surface disturbance activities such as sonar sightings and test drilling necessary to locate potential resource sites.
82. **Extraction:** Any excavation made for producing oil, natural gas and/or geothermal resources and also includes activities and structures ancillary to the extraction operation including, but not limited to, pumping facilities, storage tanks, pipelines, waste ponds and equipment sheds.
83. **Extraterritorial Planning District:** That portion of the Rio Communities planning jurisdiction that lays outside the city limits.
84. **Fabrication:** Creating specialized parts from raw materials.
85. **Family:** One or more persons occupying a single dwelling unit.
86. **Family Day Care Business:** An occupied dwelling in which a person(s) provides care, services and supervision for at least 3 but not more than 6 children at any 1 time and for a period of not more than 24 hours of any day; or for any number of children from only 1 family other than the person's own family.
87. **Family Day Care Home:** means the provision of day care in a private residence for up to twelve children as permitted by the state. This is a home occupation and will require that the planning commission grant a conditional use permit.
88. **Farm Use:** The use of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. FARM USE also includes the use of land for the primary purpose of obtaining profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. FARM USE includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on the land for human or animal use. FARM USE includes the on-site construction and maintenance of equipment and facilities used for the activities described in the chapter.
89. **Fence:** A structure, other than a building that serves as a barrier and is used as a boundary or means of protection or confinement. This includes a masonry fence or wall and privacy fence.
90. **Flood Base:** A flood, the level of which has a 1% change of being equaled or exceeded in any given year; commonly referred to as a 100-year flood.

91. **Flood Insurance Rate Map (FIRM):** The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards (floodplain) and the risk premium zones.
92. **Flood Obstruction:** Any dam, wall, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, culvert, structure or matter that is in, along, across or projecting into any channel, watercourse or floodplain area, which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water or that is placed where the flow of water might carry the same downstream to the damage of life or property.
93. **Flood Plain:** The areas adjoining the Rio Grande river, low areas, arroyos or other waterways that may be subject to periodic inundation of floodwaters as defined in the FEMA and FIRM rate maps.
94. **Flood-proofing:** Any combination of structural and nonstructural additions, changes, or adjustments to properties and structures primarily for the reduction or elimination of flood damage potential to lands, water and sanitary facilities, structures and contents of buildings.
95. **Floor Area:** The sum of the areas of each story of a building measured between the exterior walls of the building, but excluding garages and attic space providing headroom of less than 7 feet.
96. **Foliar Cover:** The percentage of ground cover covered by the vertical projection of the aerial portion of plants and excluding small openings in the canopy.
97. **Fortune Teller:** Any fortune tellers, psychics, clairvoyants, palmists and similar trade that are in the business practice of predicting information about a person's life.
98. **Frontage:** A distance measured along a roadway right-of-way line.
99. **Fugitive Dust:** Particulate matter not emitted from a duct or stack that becomes airborne during operations or in windy conditions.
100. **Garage or Yard Sale:** Any sale of used household or personal articles held on the premises.
101. **Governing Body:** The City of Rio Communities Council.
102. **Government:** A group of elected/appointed people that have the power to rule in a country, state, county or municipality, according to applicable administrative law.
103. **Grade:** The average elevation of the finished ground elevation at the centers of all walls of a building, except that if a wall is parallel to and within 5 feet of a sidewalk, the sidewalk elevation nearest the center of the wall shall constitute the ground elevation.
104. **Gross Floor Area:** The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.
105. **Ground Cover:** The amount (measured as a percentage) of rock, litter and vegetative basal covering the ground. This further broken down into the components; such as percent litter, percent rock and percent basal cover.
106. **Groundwater:** Water found beneath the land surface in a saturated zone.



107. **Guest Room:** room or a group of rooms forming a single habitable unit that is located within the walls of a dwelling unit and is used or intended to be used for sleeping and living, but not for cooking or eating purposes and is rented individually as a unit.
108. **Handicapped (Infirmed Home):** A residence within a single dwelling unit for up to five persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit. Persons residing in such homes, including the aged or disabled, principally need residential care rather than medical treatment.
109. **Handicapped (Infirmed Institution):** A facility housing and providing care or assistance for persons who are physically or mentally handicapped or infirm.
110. **Hardship:** To cause privation or suffering.
111. **Hazardous Materials:** A substance defined in Section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or as regulated under Subtitle C of the Federal Resource Conservation and Recovery Act. (RCRA).
112. **Hazardous Waste:** A material that is corrosive, flammable, reactive or toxic.
113. **Height of Structure:** The vertical distance from the finished grade to the highest point of the structure.
114. **Height (WCF):** The vertical distance of a wireless communications facility (WCF) or support structure as measured from the ground elevation at the base of the WCF or support structure to the top of the structure, including antenna array(s).
115. **Historic District or Landmark:** A zone district overlay classification by the county of a site or area in the county that has historical interest and significance pursuant to NMSA 1978, § 3-22-1, et seq.
116. **Hobby Kennel:** Any building, buildings or land designed or arranged for housing dogs, cats and other household pets belonging to the property resident in all residential zones (R-1, R-2, MH-1 and MH-2).
117. **Home Occupation:** Any commercial activity that is conducted by a person on the same lot in a residential district where such person resides. This is a conditional use that requires a permit for the planned activity that shall be renewed on an annual basis as required by the planning and zoning commission.
118. **Hotel:** A public house that provides lodging and board as the primary business.
119. **Impact Fee:** An impact fee is a fee that is imposed by a local government within the United States on a new or proposed development project to pay for all or a portion of the costs of providing public services to the new development.
120. **Impoundment:** A closed basin naturally formed or constructed, having the effect or purpose of water or sediment detention or retention.
121. **Impulse Noise:** Any single sound pressure peak (with a rise time less than 200 milliseconds or total duration less than 200 milliseconds) or multiple sound pressure peaks (with either rise time less than 200 milliseconds or total duration less than 200 milliseconds) spaced at least by 200 millisecond pauses.

122. **Inoperative Motor Vehicle:** Any motorized vehicle that by reason of dismantling, disrepair, damage that causes or renders the vehicle incapable of being propelled or operated under its own power, or is in violation of New Mexico Uniform Traffic Ordinances, Codes or Statues, or because of lack of insurance and registration, is not legal for public roadway use.
123. **Intermediate Home Care:** A facility maintained for the purpose of providing accommodations for not more than five occupants needing medical care and supervision.
124.  **kennel:** Any commercial operation that provides food, shelter and care of animals for purposes not primarily related to medical care or engages in the breeding of animals for sale.
125. **Kitchen:** A room or other place equipped with any combination of a stove, oven, refrigerator, small cooking device or sink and where food may be stored or prepared.
126. **Legislative amendment:** An amendment to the Zoning Chapter to establish or change a specific policy related to uses, criteria, procedure or other ordinance provisions of substantial general applicability. A LEGISLATIVE AMENDMENT may apply to the zone map or text of the Zoning Chapter.
127. **Ldn:** (1) Day or night equivalent sound level measured over a 24-hour period; it is further defined to be equivalent in terms of sound energy to the level of a continuous A-weighted sound with 10dB added to nighttime levels; (2) Ldn is computed in accordance with United States Environmental Protection Agency Standards and Procedures.
128. **Line of Sight Triangle (Clear Line of Sight Triangle):** A triangle formed by the intersection of two curbs or the edge of a city-maintained roadway measured back from the intersection or roadway twenty-five feet along the curb line or city roadway. A continuous unobstructed view of twenty-five (25) feet in both directions of the intersection or roadway to a height of 3 feet or more must be maintained.
129. **Livestock:** Domestic animals of types customarily raised or kept on farms for profit or other purposes, but not including household pets or poultry.
130. **Livestock Feed Yard:** An enclosure or structure of 1,000 square feet or more in ground area designed or used for the concentrated feeding or fattening of livestock for marketing; or an enclosure or structure less than 1,000 square feet in ground area designed or used for the concentrated feeding or fattening of 5 or more head of livestock for marketing.
131. **Livestock Sales Yard:** An enclosure or structure designed or used for holding livestock for purposes of sale or transfer by auction, consignment or other means.
132. **Loading/Unloading Area:** That physical portion expressly designated to accommodate vehicle requirements for delivery or shipment of goods, merchandise or equipment to or from a place of business.
133. **Local Street:** A street of relatively short length that provides direct access to a limited number of contiguous residential properties designed to discourage use as a through traffic.

134. **Localized Storm Water:** Surface water deposited on a particular area of land by direct precipitation and not by an overflow of surface waters from other land areas.
135. **Lot:** An area of land described by “metes and bounds” (boundary lines of land with their terminal points and angles), recorded and filed in the Valencia County Clerk's Office in accordance with appropriate laws and Ordinances. Such lot shall have frontage on dedicated public right-of-way or on an approved private roadway for ingress and egress.
136. **Lot of Record:** An individual parcel of land that has been recorded in the office of the county clerk prior to the effective day of this chapter or subsequent amendments.
137. **Lot Area:** The aggregate land area measured to property lines.
138. **Lot Depth:** The average distance between the front and rear property lines measured in the mean direction of the side property lines.
139. **Lot Width:** The average distance between the side property lines measured parallel to the front property lines.
140. **Low Income:** Households with a gross household income that does not exceed sixty percent (60%) of the area median income as defined by the New Mexico Mortgage Finance Authority for the same size within the county in which the housing is located.
141. **Luminaire:** A complete lighting unit consisting of a light source and all necessary mechanical, electrical and decorative parts.
142. **Manufacturing:** Repeatedly creating the same parts and assembling those parts; creating the end product for sale.
143. **Manufactured Home:** (1) A MANUFACTURED or modular home that is a single-family dwelling with a heated area of at least 840 square feet, constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) and the Housing and Urban Development Zone Code II or the Uniform Building Code, as amended to the date of the unit's construction and installed consistent with the Manufactured Housing Act (NMSA §§ 60-14-1 et seq.). (2) A MANUFACTURED HOME does not include any unit identified as a recreational vehicle by the manufacturer.
144. **Manufactured Housing:** A factory manufactured mobile home dwelling manufactured after June 15, 1976, to standards established by the U. S. Department of Housing and Urban Development that has external dimensions of at least twenty-four (24) feet by forty (40) feet and is installed on a permanent foundation. A manufactured housing unit is considered equivalent to a single-family dwelling. A wall shall be installed continuously, except for ventilation and access, along the entire perimeter of the unit between the unit and the ground to give it the appearance of a site-built house. The wall shall be of masonry construction or similar material. The tongue, axles, transporting lights, and towing apparatus shall be removed before occupancy. Multi-Sectional manufactured housing are protected by HUD regulations and may be placed in any residential zone.
145. **Metal Intake/Recycling Center:** Any business engaged in purchasing or otherwise acquiring for sale or barter, any material such as old iron, copper, brass, lead, zinc, tin,

aluminum or other metals, metallic cable, wire, rope, bottles, rubber, batteries, e-scrap or other like material.

146. **Minor WCF:** Includes those wireless communications facilities that do not exceed 60 feet in height, not including the support structure or any antenna arrays and are generally regarded as micro cells or repeater stations.
147. **Mitigation Measures:** Any proposed or activity undertaken for the purpose of lessening or eliminating adverse impacts resulting from mining and related activities.
148. **Mixed Use Development:** A development with residential and nonresidential uses combined.
149. **Mixed-Use:** Allowing more than one type of use in a building or set of buildings.
150. **Mobile Home:** (1) A transportable structure exceeding eight (8) feet in width and thirty-two (32) feet in length, built on a chassis, regardless of whether the towing tongue has been removed. These units are designed for use as movable dwellings with or without a permanent foundation when connected to utilities. (2) A structure constructed for movement on public highways that contains sleeping, cooking and plumbing facilities, or is intended for human occupancy or for a residential purpose and was constructed before June 15, 1976, and met the construction requirements of the New Mexico Manufactured Home Association Regulations in effect at the time of construction.
151. **Mobile Home Park:** An area of land on which space is leased or rented for occupancy for thirty (30) or more days by mobile homes and that contains permanent facilities and services for the use of the mobile home occupants.
152. **Mobile Home Space:** A plot of ground within a mobile home park or travel trailer park designed to accommodate one mobile home or travel trailer together with its accessory structures including carports or other off-street parking areas, storage lockers, ramadas, cabanas, patios, patio covers, awnings and similar appurtenances.
153. **Modular Dwelling Unit:** A building fabricated in a factory and designed to be transported to or be incorporated with similar units at a building site and placed on a permanent foundation. The term is intended to apply to major assemblies that must conform to the local building code.
154. **Modular Home:** A building fabricated in a factory and designed to be transported on something other than its own chassis and designed to be stand-alone or incorporated with similar units at building site into a modular structure. The term is intended to apply to major assemblies that must conform to the local building code and does not include prefabricated panels, trusses, plumbing, trees and other sub-elements that are to be incorporated in a structure at the building site.
155. **Modular Structure:** Any structure built for occupancy by person or property, whether or not designed to be placed on a permanent foundation. Modular structures include factory-built buildings and subassemblies for manufactured residential or commercial units; modular homes and pre-manufactured homes. A modular structure does not include non-assembled component requirements, nor does it refer to manufactured housing structures that are subject to federal regulation as parts, which are subject to all permit and inspection per Section 14-12-3.7.K of the NMAC.

156. **Motel:** One or more attached or detached buildings containing housekeeping or sleeping units designed and used for the temporary accommodation of tourists or transients with an off-street parking space for each unit.
157. **Motor Vehicle Sales Lot:** Any lot or parcel of land where a dealer sells new, used or for consignment, motor vehicles.
158. **Mulch:** Vegetation residues or other organic materials that aid in stabilizing soils and conserving soil moisture.
159. **Multi-Family:** A classification of housing where multiple separate housing units for residential inhabitants are contained within one building or several buildings within one complex. A common form is an apartment building.
160. **Multi-Generational Family:** A family households consisting of three or more generations.
161. **Multi-Section (Manufactured/Modular) Home:** A single-family dwelling with a heated area of at least thirty six (36) feet by twenty-four feet (24) or at least eight hundred and sixty-four (864) square feet and constructed in a factory to the standards of the United States department of Housing and Urban Development (HUD), the National Urban Development Zone Code 2 or the Uniform Building Code as amended, to the date of the unit's construction and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and with the regulation made pursuant thereto relating to permanent foundations.
162. **Natural Vegetation:** Vegetation that occurs spontaneously without regular management, maintenance or species introduction or removal and that generally has a strong component of native species; Indigenous vegetation. Natural vegetation is the vegetation that would have been growing in any given area in the absence of man.
163. **Noise Sensitive Zone:** Areas where ensuring exceptional quiet is of importance during day and night hours. Noise sensitive activities include, but are not limited to, operations of schools; libraries open to the public, churches, hospitals and nursing homes.
164. **Non-commercial:** Any enterprise or initiative (e.g. not for profit, artistic, educational, scholarly, or personal) that is not conditioned upon any fare, fee, charge or other consideration intended for profit.
165. **Non-conforming Lot:** A lot existing at the effective date an ordinance is codified but does not now meet the current minimum code requirement of the district in which the lot is located.
166. **Non-Conforming Use:** A building, structure or use that was legally established before the adoption of any provision of this chapter with which the building, structure or use does not comply.
167. **Non-profit:** Any business that has been granted tax-exempt status by the Internal Revenue Service (IRS) because it furthers a social cause and provides a public benefit.
168. **Nursing Care Home:** A facility that provides skilled nursing care and medical supervision to no more than five people but at a lower level than is available in a hospital.
169. **Nursing Care Institution:** A facility that provides skilled nursing care and medical supervision to more than five people but at a lower level than is available in a hospital.

170. **Official Zoning Map:** The zoning map and any amendments thereto adopted by the City of Rio Communities or as described in City Ordinances.
171. **Open Space:** Any land so designated by the City's comprehensive plan or any land area, the preservation of which in its present use would: 1) Conserve and enhance natural or scenic resources; 2) Protect air, streams or water supply; 3) Promote conservation of soils or wetlands; 4) Conserve landscaped areas such as public or private golf courses that reduce pollution and enhance the value of abutting or neighboring property; 5) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space; 6) Enhance recreation opportunities; 7) Preserve historic sites; 8) Promote orderly urban or rural development; or 9) Retain in their natural state, tracts of land on the conditions as may be reasonably required by the City.
172. **Overlay Zone:** A zone district placed over other zones such that special zoning requirements are imposed in addition to those of the underlying zone. Development within the overlay zone must conform to the requirements of both zones or the more restrictive of the two zones. An overlay zone is created to identify a special resource or development area and to adopt new provisions that apply in that area.
173. **Owner:** An owner in fee simple of land, a purchaser or seller of land pursuant to a recorded real estate contract, or the authorized agent of the same.
174. **Owner Occupied:** A dwelling occupied by a person or persons who shall own at least 51% (fifty-one percent) of said dwelling unit.
175. **Owner of Record:** The person or persons who, according to the public records, is or are the owner or owners of a particular property.
176. **P & Z:** The Rio Communities Planning and Zoning Commission.
177. **Parcel (Lot):** A unit of land, excluding any public right-of-way, created by an authorized subdivision or partitioning of land or that was created by deed or land sale contract and was recorded or platted with the acknowledgment by signature of the County Clerk.
178. **Parcel Coverage:** The area of a parcel covered by a building or buildings expressed as a percentage of the total area.
179. **Parcel Line (Front):** Any boundary line separating the parcel from a public road. Where a parcel has no frontage on a public road, the front parcel line is the line of the easement or private road that serves the parcel and is nearest to the principal dwelling, if any.
180. **Parcel Line (Rear):** The boundary line or lines most distant from the front parcel line and not intersecting a front parcel line.
181. **Park:** Any public or private land reserved for recreational, educational, cultural or open space uses.
182. **Parking Space (Off Street):** A space adequate for parking 1 automobile with room for opening doors on both sides, together with properly related access to a road or alley and maneuvering room.
183. **Patio Home:** A building intended for occupancy by one family. These structures may be built on a zero-lot line such that they are attached along a side lot line by a garden wall, a cross wall or common wall with another unit.

184. **Pawn Broker:** An individual or business (pawnshop or pawn shop) that offers secured loans to people, with items of personal property used as collateral.
185. **Performance Bond:** A type of a contract bond, either in surety or in guarantee that contains the promise of a third party, usually a bonding company, to pay for the cost of completion or performance of conditions of approval under the conditions of a contract and that protects the City against any loss due to inability or refusal of an applicant, petitioner, association, or developer from performing the conditions of approval under the contract.
186. **Permanent Foundation:** Constructed or assembled components consisting of durable materials (e.g. concrete, masonry or other approved materials) that are required to be constructed on-site and shall have attachment points to anchor and stabilize the manufactured or mobile home. The design of the foundation shall be approved by the Design Approval Primary Inspection Agency of the Housing and Urban Development or it shall be designed by a licensed professional engineer who has expertise in the field in accordance with the manufacturer's specifications.
187. **Permitted Use:** A use permitted in a zoning district that complies with all of the regulations applicable in that district.
188. **Person:** A firm, association, organization, partnership, trust, company or corporation, as well as an individual.
189. **Place of Public Assembly:** A structure or place which the public may enter for purposes as deliberation, education, worship, shopping, entertainment, amusement, awaiting transportation or similar activity.
190. **Planned Development:** 1) A Planned Development contains parcels or groups of parcels that may be platted or un-platted, have “planned development strategies” on record or have some utilities, but remain, for the most part, blank slates. 2) A Planned Development presents an opportunity for unique and boundless growth that promotes flexibility in thought and encourages innovative development sensitive to surrounding land uses, community needs and the natural environment.
191. **Planned Residential:** A development constructed on a tract of at least five (5) acres under single ownership; is planned and developed as an integral unit, consisting of single-family detached residences combined with either two-family residences or multi-family residence.
192. **Planned Unit Development:** A development constructed on a tract of at least ten (10) acres under single ownership, planned and developed as an integral unit, consisting of a combination of residential and nonresidential uses.
193. **Planning Commission:** The Planning and Zoning commission of the City.
194. **Premise:** Any lot or combination of contiguous lots held in single ownership, together with the development thereon.
195. **Principal Dwelling:** The primary dwelling on any parcel.
196. **Principle Use:** The primary use of a lot or parcel that may be either a permitted or conditional use.

- 197.**Property:** That which a person owns; the possession or possessions of a particular owner; goods, land, possessions; a piece of land or real estate: property; ownership; right of possession, enjoyment or disposal of anything, especially of something tangible.
- 198.**Property Line (Front):** The boundary of a lot bordering on a street or public right-of-way.
- 199.**Property Line (Rear):** The boundary of a lot opposite and most distant from, but not adjoining, the front property line.
- 200.**Property Line (Side):** Any boundary that is not a front property line or a rear property line.
- 201.**Public Right-Of-Way:** The area of land deeded, dedicated or reserved by plat, or otherwise acquired by the county or the State of New Mexico, primarily for general public use, for utilities, and for the movement of people, goods and vehicles.
- 202.**Quasi-judicial amendment:** A quasi-judicial amendment is a zone map amendment changing the zone map from one zone designation to another. A QUASI-JUDICIAL AMENDMENT applies to a specified tax lot or lots and results in the realignment of zone district boundaries.
- 203.**Recreational Vehicle or RV:** Any travel trailer, camper, motor home, or other unit mounted on a chassis with or without motive power that is designed for human occupancy and to be used temporarily for recreational or emergency purposes and has a gross floor area not exceeding 400 square feet.
- 204.**Recreational Vehicle or RV Park:** Any lot or tract developed primarily to provide parking and related services to 2 or more transient recreational vehicles on a fee basis.
- 205.**Residence (Multi-Family):** A residential use consisting of a building containing two or more dwelling units that are enclosed within that building or attached to it by a common wall or floor.
- 206.**Residence (Primary) with Accessory Dwelling Unit:** A residence having the external appearance of a single-family residence but in which a second dwelling unit is located. The second dwelling comprises not more than twenty-five (25%) percent of the gross floor area of the building or more than a total of seven hundred fifty (750) square feet.
- 207.**Residence (Single-Family Detached):** A residence consisting of a single detached building containing one dwelling unit and located on a lot containing no other dwelling units.
- 208.**Residential:** The act of living in a particular place, or the place where one actually lives.
- 209.**Residential Group Home:** A residential treatment or training or an adult foster home licensed under the authority of the Department of Health pursuant to NMSA 1978, § 24-1-1 et seq. and provides residential care alone or in conjunction with treatment or training or a combination thereof for 5 or fewer individuals who need not be related.
- 210.**Restaurant:** An establishment that serves food and beverages that are consumed on premises by customers seated at tables and or counters either inside or outside the building; may be engaged in providing customers with take-out service of food and or non-alcoholic beverages for off-site consumption. Sale of alcoholic drink is controlled by



other provisions in this code and the New Mexico State statutes regarding alcoholic drink sales.

211. **Right-of-Way:** A dedicated and accepted public land deeded to the City of Rio Communities, reserved by plat or otherwise acquired by the City, County or State for the use by the public for the movement of people, goods, and vehicles.
212. **Road:** A public or private way used to provide motor vehicle access to areas or buildings.
213. **Road Department:** The Rio Communities Road Department otherwise referred to as the "ROAD DEPARTMENT."
214. **Roadway:** That portion of public right-of-way or private way or thoroughfare that is primarily devoted to vehicular use.
215. **Sand And Gravel:** Rock or similarly occurring consolidated or unconsolidated naturally occurring materials, including but not limited to, stone, sand, gravel, aggregate and riprap.
216. **Sanitary Sewer System:** A public or private sewage collection, treatment and disposal system and all appurtenant (attached) improvements as approved by the State of New Mexico Environmental Department.
217. **School:** A public or private elementary school, grade school, middle school, junior high school, high school, college or university. The term SCHOOL does not include commercial operations that offer classes of a primarily recreational nature.
218. **Secondary Dwelling Residence:** A dwelling other than a principal dwelling, used for a caretaker, health care or farm worker residence, guest house or similar use accessory to the principal residence.
219. **Setback:** The required distance between any building or structure (fences, walls and signs excepted) and a boundary line of the lot upon which it is located. Setbacks shall consist of an open space, unoccupied and unobstructed by any part of a building or structure, except as otherwise provided in this Ordinance.
220. **Setback (Front):** The minimum allowable distance between a structure and the boundary line of the lot upon which such structure is located, bordering on a roadway.
221. **Setback (Rear):** The minimum allowable distance between any main building and the rear property line of the lot on which such building is situated.
222. **Setback (Rear):** The minimum allowable distance between a structure and the boundary line of the lot upon which such structure is located that is opposite and most distant from a roadway and does not intersect with a roadway.
223. **Setback (Side):** The minimum allowable distance between a structure and the boundary line of the lot upon which such structure is located that intersects a roadway.
224. **Shall (and Must):** The words shall and must are mandatory; the word may is permissive.
225. **Shopping Center:** Any center for the sale of retail goods or professional services containing five or more businesses.
226. **Sign:** A physical informational display (such as a lettered board, picture or a configuration of lights) used to identify or advertise, but not limited, to a place of business, a service, a product, or an affiliation.

- 227.**Sign:** Any device designed to inform or attract the attention of persons not on the premises on which the sign is located, except the following: 1) Flags or government insignias (except when used in commercial displays); 2) Decorative or architectural features integral to a building's design (except letters larger than one (1) square foot, trademarks, or moving parts or lights); 3) Illustration of names of occupants, post office box numbers and property numbers when smaller than one (1) square foot; 4) Legal governmental bodies, notices, identification, informational or directional signs erected or required by government bodies; 5) Private traffic signs bearing no advertising; and 6) Real estate signs advertising the property on which the sign is located, provided area of sign or group of signs is less than three square feet.
- 228.**Sign-With Backing:** (1) Any sign that is displayed upon, against or through any material or colored surface or backing that forms an integral part of the display and that differentiates the overall display from the background against which it is placed. (2) Words, letters, and other advertising elements attached directly to a roof or wall shall not be considered a sign with backing.
- 229.**Sign (Flashing):** Any illuminated sign within or upon which the illumination is not maintained stationary and constant in intensity and color.
- 230.**Sign (Free-standing):** Any sign that is attached to, erected on or supported by some structure that is not itself an integral part of or attached to a building or other structure having a principal function other than the support of a sign. A sign that stands without supporting elements, such as a "sandwich sign," is also a freestanding sign.
- 231.**Sign (Illuminated):** Any sign designated to give forth any artificial light or designed to be illuminated by artificial light from another source and does not include a flashing sign.
- 232.**Sign (Off-Premises):** Any sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction or other activity that is conducted, sold or offered at a location other than the premises on which the sign is located.
- 233.**Sign (Projecting):** Any sign attached to a structure and projecting perpendicularly out from the wall or roof to which it is attached.
- 234.**Sign (Surface Area):** The surface area of a sign shall be computed to include the entire area within a regular geometric form or combination of regular geometric forms comprising all of the display area on 1 side of any free-standing sign or roof or wall mounted sign with backing; or 2) The area resulting from encircling the lettering and all other elements of signage displayed on roof or wall mounted signs without backing. Frames and structural members not bearing advertising matter shall not be included in computation of surface area.
- 235.**Sign (Temporary):** Any sign that is used in connection with a circumstance, situation or event that is designed, intended or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

- 236.**Skid Row:** A high density of businesses that may have the potential to create adverse effects on the surrounding area and community.
- 237.**Smoke Shop:** Any business devoting more than fifteen percent (15%) of the total floor space for display for sale of smoking or tobacco paraphernalia or whose gross dollar volume of business is over twenty-five percent (25%) from sales of smoking or tobacco paraphernalia.
- 238.**Solid Fence:** Any block, ribbed metal panels, adobe, solid vinyl or other fencing that has zero percent (0%) open area or transparency.
- 239.**Special Event:** Any circus, fair, carnival, festival or other type of special event that run for longer than one day but not longer than one week. These activities are likely to attract substantial crowds and are unlike the customary or usual activities generally associated with the property where the special event is to be held.
- 240.**Special Use:** Any specific type of use identified specifically in The Zoning Code or due to unique characteristics, is subject to the particular requirements or standards provided in The Zoning Code that may differ from or exceed those required of other uses in the same zoning district. Special Use zoning normally expires with change of ownership, unless stated in the permit and approved by the Commission.
- 241.**Street:** Any public way (paved or unpaved) for vehicular and pedestrian traffic whether.
- 242.**Street (Arterial):** Any major street in the City's street system that serves as an avenue for the circulation of traffic onto, out, or around the City and carries high volumes of traffic.
- 243.**Street (Collector):** Any street, its principal function is to carry traffic between local, collector and arterial streets but does not provide direct access to abutting properties.
- 244.**Street (Cul-de-Sac):** Any street that terminates in a vehicular turnaround.
- 245.**Street (Local):** Any street its sole function is to provide access to abutting properties. It serves or is designed to serve not more than twenty-five dwelling units and is not designed to handle more than two hundred trips per day.
- 246.**Structure:** Anything manufactured or constructed by humans, as opposed to that occurring in nature, that is affixed, anchored, or otherwise attached to or below the surface of the ground.
- 247.**Structure (Accessory):** Any structure that is subordinate to and the use of which is incidental to that of the principal building, structure or use on the same lot.
- 248.**Substantial Improvement:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either: 1) Before the improvement or repair is started; or 2) If the structure has been damaged and is being restored, before the damage occurred; 3) For the purpose of this definition "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include either: (a) Any project for improvement of a structure to comply with existing state of local health, sanitary or safety code specifications that are solely necessary to assure safe living conditions; or (b) Any

alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

249. **Support Structure:** 1) Any structure designed and constructed specifically to support an antenna array and may include a monopole, self-supporting (lattice) tower, guy-wire support tower and other similar structure. 2) Any device used to attach a WCF to an existing building or structure shall be excluded from this definition.
250. **Telecommunication Transmission Facility (TTF):** Any unmanned facility consisting of antennae, equipment storage shelter used for the reception, switching and or transmission of wireless telecommunications including, but not limited to paging, enhanced specialized mobile radio, personal communication services, cellular telephone, and similar technologies. (1. **Equipment storage shelter** is any unmanned structure used for freestanding facilities or when necessary, roof or building mounted facilities to house TTF equipment. These shelters shall not exceed four hundred fifty (450) square feet for each facility; 2 Roof or building-mounted facility is any facility in which antenna is mounted to an existing structure, on the roof of a building or on the building face. The facility will include both antenna and related equipment. The equipment will be located in the existing structure or within an unmanned equipment storage shelter).
251. **Temporary:** Lasting for a limited time only; existing or continuing for a limited (usually short) time; transitory.
252. **Temporary Emergency Construction:** Any residence (may be a mobile home) that is located on the same lot as a residence made uninhabitable by fire, flood or other natural disaster and occupied by the person displaced by such disaster. This definition also includes nonresidential construction sites occupied by persons having construction or security responsibilities over such construction site not to exceed six (6) months without approval from the Planning and Zoning Commission.
253. **Temporary WCF:** Any portable antenna array or attached wireless communication facility (WCF) that is designed for temporary placement and does not require the construction of a support structure.
254. **Townhouse:** A building consisting of a group of two or more, but not exceeding six attached dwelling units divided from each other by common walls, with each dwelling unit situated on a separate lot and each dwelling unit having a separate entrance at ground level.
255. **Travel Trailer Court (Campground):** Any parcel of land licensed and used for the transient commercial parking of occupied travel trailers, mobile homes, pick-up campers, converted buses, recreational vehicles, tents or similar devices used for temporary portable housing.
256. **Truck Stop:** A place providing specialized facilities for retail fueling services for tractor-trailer or semi-trucks; the site may include related facilities including, but not limited to, restaurants and overnight parking.
257. **Underground Storage Tank:** Any single tank or combination of tanks, including underground pipes connected thereto that are used to contain an accumulation of fuels,

hazardous materials, or other regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten (10) per centum or more beneath the surface of the ground. This definition does not include septic tanks.

258. **Usable Open Space:** An area that is not encumbered with any substantial structure, is not devoted to use as a roadway, parking area or sidewalk, is landscaped for ball fields, picnic areas, or similar facilities or is capable of being used for purposes of informal and unstructured recreation and relaxation, and is legally and practicably accessible to the residents of the development or to the public if dedicated for public use.
259. **Use, Accessory:** See Accessory Use.
260. **Use (Principal):** See Principle Use.
261. **Utility:** Any area of land or any structure used for the generation, storage conversion or transfer of energy or for communication facilities, such as telephone, telegraph, radio or television, or water distribution or wastewater system whether privately or publicly owned.
262. **Variance:** Relaxation of a zoning condition that is not contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicants, a literal enforcement of the conditions would result in unnecessary and undue hardship. A variance may be authorized only for area, height, dimension, distance, setback, off-street parking and off-street loading requirements. Financial gain or loss shall not be the determining factor in deciding a variance. Variance represent a permanent change in zoning of the land, unless other restrictions are placed on it by the Planning and Zoning Commission.
263. **Very Low Income:** Any households with a gross household income that does not exceed fifty percent of the area median income as defined by New Mexico Mortgage Finance Authority for households of the same size within the county in which the housing is located.
264. **Visual Barrier Fence:** Any wood panel fencing, chain-link with slats, mess fencing or any other fencing that provides twenty-five percent (25%) or less open area per square foot of fencing.
265. **Warehousing Operation:** The use of any building, structure or other protected enclosure in which goods, materials or agricultural products are or may be stored.
266. **Warm Season Turf Grass:** Any selection or combination of grasses such as Blue Grama, Buffalo and other grass species which require moderate infrequent applications of water throughout its life.
267. **Wireless Communications Facility (WCF):** Any unstaffed facility for the transmission and or reception of wireless communications services, usually consisting of an antenna array, transmission cables, equipment facilities, and a support structure.
268. **Wellhead:** The structural element of a constructed water well that is the source of a groundwater supply system.
269. **Wireless Communications:** Any wireless services as defined in the Federal Telecommunications Act (Public Law 104–104—Feb. 8, 1996) that includes FCC licensed commercial wireless telecommunications services (PCS), specialized mobile radio

(SMR), enhanced specialized mobile radio (ESMR), paging and other similar services that currently exist or that may in the future be developed.

- 270.**Xeriscape:** Any landscaping using methods that lower water use, amend the soil, and favor indigenous plant species.
- 271.**Yard:** A required open area unoccupied and unobstructed by any structure or portion of a structure at the general ground level of the graded parcel upward; provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.
- 272.**Yard (Front):** Any yard abutting a street or lying parallel to the front parcel line.
- 273.**Yard (Rear):** Any yard abutting a back or rear parcel line.
- 274.**Yard (Side):** Any yard abutting a side parcel line.
- 275.**Zero Lot Line (Residential):** Any structure or structures whereby the main building is situated on a lot such that a common wall between attached dwelling units is on or along a side lot line and may include duplexes, condominiums, patio homes and townhouses.
- 276.**Zone Map:** A map of the City of Rio Communities that delineates the Zone District boundaries within the City Boundaries.
- 277.**Zoning Authority:** The Planning and Zoning Commission.

End of Appendix A

**City of Rio Communities  
Code of Ordinances  
APPENDIX B**

**LINE OF SIGHT DIAGRAMS (PLACEHOLDER)**

DRAFT

End of Appendix B

DRAFT



# CHAPTER 39

## CODE OF CONDUCT

Section

- 39.01 Short title**
- 39.02 Declaration of policy**
- 39.03 Responsibility of public office and employment**
- 39.04 Definitions**
- 39.05 Non-partisanship**
- 39.06 Public trust**
- 39.07 Conduct avoiding impropriety**
- 39.08 Prohibited financial interest in city business**
- 39.09 Conflict of interest, disclosure**
- 39.10 Confidential information and misuse of non-public confidential information**
- 39.11 Use of position to obtain information**
- 39.12 Misuse of city property and resources for private gain or personal advantage** Revised 1/20
- 39.13 Misuse of city property or resources for political purposes** Revised 1/20
- 39.14 Use of confidential information for private gain** Revised 1/20
- 39.15 Misuse of title or prestige of office for private gain or personal advantage** Revised 1/20
- 39.16 Political activity** Revised 1/20
- 39.17 Disclosure** Revised 1/20
- 39.18 Coercion**

## **39.19 Reporting, investigating, and making determinations pertaining to violations of this chapter**

## **39.20 City Ethics Panel**

## **39.21 Right of appeal**

## **39.22 Non-retaliation**

## **39.23 Ex parte communications**

## **39.24 Restrictions on the Governing Body; administration of the personnel system, management**

### **39.01 SHORT TITLE.**

This chapter may be cited as the “City of Rio Rancho Code of Conduct.”

(Ord. 16-19)

### **39.02 DECLARATION OF POLICY.**

The City of Rio Rancho seeks to foster and maintain transparency while conducting city business, creating policy and undertaking the day to day operation of the city. This chapter establishes minimum standards of ethical behavior and sets forth explicit standards of conduct by requiring elected officials, appointed officials, and employees to disclose personal interests, financial or otherwise, in matters of the city and to remove themselves from decision making when such interests exist.

(Ord. 16-19)

### **39.03 RESPONSIBILITY OF PUBLIC OFFICE AND EMPLOYMENT.**

Elected officials, appointed officials, and employees of the city are bound to uphold the Constitution of the United States, the New Mexico Constitution, and federal, state and local laws; to adhere to the highest standards in the exercise of powers and duties of office or employment; to impartially carry out their duties; to discharge their duties of office regardless of personal considerations; and to recognize that public interest must be the prime objective.

(Ord. 16-19)

### **39.04 DEFINITIONS.**

(A) **ADMINISTRATIVE ACTION.** Action based upon the application or interpretation of a city ordinance or state statute, or a proceeding involving a license permit, franchise or development use.

**(B) ANYTHING OF VALUE, BENEFIT, OR THING OF VALUE.** Includes all matters, whether tangible or intangible, that could reasonably be considered to be of advantage or worth, use or service to the person to whom they are conferred. This includes: money; products or merchandise; works of art or collectibles; stocks, bonds, notes or options; real property or an interest in real property; contracts or a promise of future interest in a contract; an interest or a promise of a future interest in a business; non-alcoholic beverages; a meal with a total value exceeding \$50 or meals from a single person or entity with a cumulative total value exceeding \$500 annually; excluding meals provided in connection with an event produced by a non-profit charitable organization, government entity, public school or a public event where the person attending is serving in an official capacity; transportation and related travel expenses not to exceed \$75 per trip or transportation and related travel expenses from a single person or entity for trips with a cumulative total value exceeding \$500 annually; lodging; services including loaned employees; loans, loan guarantees or cosigning; loans at below market interest; forgiveness of a debt; discounts or rebates not extended to the public generally, and this does not include general discounts that are offered to all government employees at all levels of government; preferential treatment; tickets of admission; excluding tickets or admission provided in connection with an event produced by a non-profit charitable organization, government entity, public school or a public event where the person attending is serving in an official capacity; paid compensation not commensurate with fair and reasonable value of services rendered; free or discounted use of office equipment and facilities; intentional overpayment or knowing duplicate payments for expenses or costs; radio or television time which is not paid at fair market value; promise or offer of present or future employment; use of autos, boats, apartments, or other recreational or lodging facilities; intangible rights such as a cause of action; licenses, patents, intellectual property, copyrights, or an interest in them; and any other item, tangible or intangible, having economic value. "Anything of value," "benefit," or "thing of value" does not include political endorsements, support in a political campaign or a promise of an endorsement, political activities, or political support. Nothing in this section shall be construed to prohibit an occasional, non-pecuniary gift, insignificant in value, or an award publicly presented in recognition of public service.

**(C) APPOINTED OFFICIAL.** A person who is not an elected official or city employee and has been appointed by the Governing Body to serve on a city board, commission, committee, or other body established by the Governing Body, or to perform other functions at the request of the Governing Body.

**(D) GOVERNING BODY OR CITY COUNCIL.** The Governing Body of the City of Rio Rancho.

**(E) CONFIDENTIAL INFORMATION.** Information that has been classified as confidential by law and/or information contained on city owned and/or operated equipment, including but not limited to electronic correspondence, diagrams, charts, all components of electronic files, data, records,

pictures, documents; visual, voice and electronic recordings; and any other data or information stored or maintained on computer memory or device.

(F) **CONFLICT OF INTEREST.** A situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.

(G) **CONTRACT.** An agreement between two or more parties, whether express or arising by operation of law.

(H) **CONTRACT ETHICS OFFICIAL.** An attorney contracted by the city who will perform independent reviews of complaints, conduct investigations, gather information, draft reports and make recommendations in accordance with this chapter. The Official will be contracted through the City Attorney's office through normal process, in agreement with the City Manager.

(I) **EMPLOYEE.** A non-elected person who is employed, in any capacity, by the City of Rio Rancho.

(J) **ELECTED OFFICIAL.** A member of the Governing Body, including City Councilor, Mayor, and the Municipal Court Judge.

(K) **EX PARTE COMMUNICATION.** A direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceedings. Ex parte communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.

(L) **FAMILY.** An individual's spouse, domestic partner, parent, child, sibling, and like in-laws, by consanguinity or affinity, and persons, related or unrelated, living within the household.

(M) **FINANCIAL INTEREST.** Any interest of an elected official, an employee, or an appointed official that is: (1) an ownership interest or other interest in any contract or prospective contract with the city; (2) an interest in the sale of real or personal property to or from the city; (3) a financial relationship with a person or business whose interests may be affected by the city; (4) any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property from the city; or (5) any other interest that may be affected by the city. For the purposes of this chapter, an interest shall be one either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two percent of the ownership interest of any other business that is doing business with the city in an amount in excess of \$7,500 annually. An interest held by the elected

official's spouse or minor children shall be considered an interest of the elected official, appointed official, or employee for the purposes of this chapter.

(N) **FRIVOLOUS.** A determination made by the Ethics Panel when two or more complaints made by an individual or entity have been determined to be unsubstantiated and contain allegations that are found to have no factual basis.

(O) **HARASSMENT.** Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, alarm, bully or intimidate another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

(P) **IMMEDIATE FAMILY.** A spouse, domestic partner, child, child of a sibling, a parent, a grandparent, a grandchild, like in-laws, and like step-children.

(Q) **NON-PUBLIC INFORMATION.** Information that is obtained in the course of an elected official's, appointed official's, or employee's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.

(R) **PARTY.** A person who has submitted to the city an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.

(S) **PENDING ADJUDICATION.** Any application, petition, complaint, protest, investigation, or other administrative adjudicatory proceeding requiring decision or action by the Governing Body, the Planning and Zoning Board, the Utilities Commission, Development Services Department, or any other board or commission established by the Governing Body.

(T) **PERSONAL BENEFIT.** The obtaining or promise of obtaining anything of value.

(U) **POLITICAL ACTION.** Conduct in which elected officials or appointed officials use their official positions to exercise influence on city employees, elected officials or appointed officials; the phrase includes intervention on behalf of constituents with a governmental agency, and endorsement, pledging support, or actively supporting a city governmental matter, a nominee or a candidate for public office.

(V) **SUBSTANTIATED CLAIM.** A violation of this chapter verified by competent facts and that substantial evidence exists to support.

(W) **UNSUBSTANTIATED CLAIM.** A claim that is not supported by competent facts or substantial evidence or existent of facts and/or an allegation that is not a per se violation of this chapter.

(Ord. 16-19)

### **39.05 NON-PARTISANSHIP.**

All actions, decisions and votes on matters relating to city government shall be on the merits.

Decisions shall be made objectively, without party or partisanship considerations, and without facts which are not directly and properly related to the matter requiring action.

(Ord. 16-19)

### **39.06 PUBLIC TRUST.**

(A) Elected officials, appointed officials, and employees shall act according to the highest principles of representative democracy to ensure that city government is worthy of public respect, trust and support.

(B) Elected officials, appointed officials, and employees shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have used their public positions improperly, unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this chapter.

(C) Elected officials, appointed officials, and employees shall not provide or disseminate to the public any information or data which they should reasonably know to be untrue, inaccurate or misleading. It is incumbent upon elected officials, appointed officials, and employees to correct such information as quickly as reasonably possible.

(D) It is a violation of this chapter for elected officials and appointed officials to knowingly violate their own rules of procedure or any other law or ordinance.

(Ord. 16-19)

### **39.07 CONDUCT AVOIDING IMPROPRIETY.**

(A) Elected officials, appointed officials, and employees shall avoid conduct that creates the appearance of impropriety or that is otherwise unbecoming a public official. An impropriety can mean misconduct or behavior that demonstrates an unethical process or improper influence.

(B) Elected officials, appointed officials, and employees shall not knowingly engage in conduct that violates the rights of others to be treated fairly.

(C) Elected officials, appointed officials, and employees shall refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for private benefit.

(Ord. 16-19)

### **39.08 PROHIBITED FINANCIAL INTEREST IN CITY BUSINESS.**

(A) No elected officials, appointed officials, or employees may have a financial interest if the elected official, appointed official, or employee is in a decision making capacity with respect to the financial interest.

(B) Elected officials, appointed officials, and employees who have any financial interest shall disclose such interest by filing a disclosure of interest and recording the same with the City Clerk and by disclosing the interest as otherwise provided in this chapter or by law, and shall thereafter be disqualified from participating in any debate, decision or vote relating thereto.

(Ord. 16-19)

### **39.09 CONFLICT OF INTEREST, DISCLOSURE.**

(A) Elected officials, appointed officials, and employees shall strictly avoid transactions and relationships that create a conflict of interest. Where a conflict of interest is unavoidable, the elected official, appointed official, or employee shall disclose the conflict of interest and shall subordinate the conflicting interest to the public interest, and the disclosure shall be recorded by the Clerk as part of the minutes of the meeting at which the disclosure is made.

(B) Elected officials, appointed officials, and employees shall exercise their duties, powers and prerogatives without prejudice or favoritism to hire, promote, or simply to reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.

(C) Elected officials, appointed officials, and employees shall assure that constituents and others who may be affected by decisions of the city have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide benefits or political support to the elected official, appointed official, or employee.

(D) Elected officials, appointed officials, and employees shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different services if gifts, personal benefits or political or charitable contributions are provided.

(E) Elected officials, appointed officials, and employees shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or anything of value under

circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may anything of value be solicited or received from a person or business doing business with the city, contracting with the city, regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(F) Elected officials, appointed officials, and employees shall not accept anything of value from a person, business, or other entity when the elected official, appointed official, or employee knows or reasonably should know that said person, business, or entity does any business with the city, desires to do business with the city, contracts with the city, is regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(Ord. 16-19)

### **39.10 CONFIDENTIAL INFORMATION AND MISUSE OF NON-PUBLIC CONFIDENTIAL INFORMATION.**

No elected official, appointed official, or employee shall disclose or use confidential information maintained by the city without proper authorization, and such information shall not be used to advance the financial or other private interests of said person. No elected official, appointed official, or employee shall use confidential information for personal benefit.

(Ord. 16-19)

### **39.11 USE OF POSITION TO OBTAIN INFORMATION.**

No elected official, appointed official, or employee shall use their position to obtain information from another entity or individual for their personal benefit. Neither shall an elected official, appointed official, or employee obtain, or attempt to obtain, information from an individual or entity on behalf of the city when the information will be used for their personal interest or benefit.

(Ord. 16-19)

### **39.12 MISUSE OF CITY PROPERTY AND RESOURCES FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.**

(A) An elected official, appointed official, or employee shall not use public property for any private purpose or nongovernmental purpose except as specifically provided by law. Public property includes public funds, time, facilities, property, equipment, mailing lists, computer data, services or any other governmental asset or resource. This section does not prohibit the reserving or renting of city property which is designated as either public space or public meeting space and otherwise made available to all members of the public, nor the occasional and limited use of city property and resources for personal purposes if:



(1) The use does not interfere with the municipal activities duties, or operations;

(2) The cost or value related to the use is of such nominal value that reimbursement procedures would not be reasonable or justified; and

(3) The use does not create the appearance of improper influence.

(B) No elected official, appointed official, or employee shall seek, accept, use, allocate, grant or award public funds for a purpose other than that authorized by law or make a false statement in connection with a claim, request or application for compensation, reimbursement or travel allowances from public funds.

(C) Unless authorized by the City of Rio Rancho Personnel Policies and Work Rules, no city employee shall be asked or permitted to perform personal services for an elected official or appointed official. An elected official or appointed official shall not require a city employee to perform personal services or assist in a private activity except in unusual and infrequent situations where the person's service is reasonably necessary to permit the elected official or appointed official to perform official duties.

(Ord. 16-19; Am. Ord. 19-39)

### **39.13 MISUSE OF CITY PROPERTY OR RESOURCES FOR POLITICAL PURPOSES.**

(A) No municipal resources, including funds, facilities and personnel, may be used for political campaign purposes or to influence an election; provided, that this shall not prohibit the use of public resources proposed for the limited purpose of educating voters about the details of a ballot question placed on the ballot as authorized by the City of Rio Rancho Governing Body pursuant to Section [1-16-3](#) NMSA 1978 (as amended). An elected official shall not use or authorize the use of municipal funds, time, facilities, equipment, mailing lists, computer data or resources, services or other government assets for the purpose of political fundraising, campaigning, or influencing an election. This prohibition includes the use of municipal communication technologies, including but not limited to municipal websites, mailers, signage, or public service announcements, regardless of the transmission method, within 60 days of the date of the election, when the elected official is on the ballot. Nothing in this section shall be construed to prohibit the use of:

(1) Mailing lists, computer data or other public information lawfully obtained from a government agency and available to the general public for nongovernmental purposes; or

(2) City property or facilities designated as public space or public meeting space which are otherwise made available to the public; provided however:

(a) All applicable reservation or rental policies of the city are observed; and

(b) Any city property or facility designated as an early voting or election day polling place for a statewide or municipal election shall not be eligible for reservation or rental within 30 days of the date of the election, when the purpose is to discuss, inform, debate or confer, in any manner, about a candidate or ballot question, or engage in any activity which may influence an election outcome regarding any candidate or ballot question.

(B) A candidate, elected official, campaign committee or another person on behalf of a candidate, elected official, or campaign committee shall not solicit, accept or authorize the solicitation or acceptance of a campaign contribution in a facility or office ordinarily used to conduct city government business. This provision applies to telephone conversations, personal meetings, and solicitations by mail. If such a contribution is offered, it shall be refused or returned promptly. If an unsolicited contribution is received in the mail, or a lawfully solicited contribution is misdirected to an office ordinarily used to conduct city business, if otherwise lawful, it may be accepted, but it may not be processed in that office, and it shall be delivered promptly to an appropriate location.

(C) Campaign material, literature, placards, posters, or any other communications intended to influence an election shall not be distributed or posted in a city facility or office ordinarily used to conduct city government business or services.

(D) Nothing in this section shall preclude the placement or distribution of a nonpartisan voter guide intended as education, which contains candidate questionnaires or ballot question information that does not advocate for or against a candidate or ballot question.

(Ord. 16-19; Am. Ord. 19-39)

### **39.14 USE OF CONFIDENTIAL INFORMATION FOR PRIVATE GAIN.**

An elected official, appointed official, or employee or a former elected official, appointed official, or employee who terminated city service within one year shall not use or disclose confidential information to obtain a benefit for the elected official, appointed official, employee, or former elected official, appointed official, employee or another person, including a person with whom the elected official, appointed official, or employee or former elected official, appointed official, or employee is associated or has negotiated prospective employment. This section does not allow the disclosure of information made confidential by law.

(Ord. 16-19; Am. Ord. 19-39)

### **39.15 MISUSE OF TITLE OR PRESTIGE OF OFFICE FOR PRIVATE GAIN OR PERSONAL ADVANTAGE.**

(A) An elected official, appointed official, or employee shall not use, induce, cause, or encourage others to use the authority, title, official letterhead or prestige of the elected official's, appointed official's, or employee's office or service for his or her own private gain or personal advantage.

(B) An elected official, appointed official, or employee shall not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title or prestige of office had been exploited. Nothing in this section prohibits the use of the official title of an elected official, appointed official, or employee as part of a political campaign or political endorsement.

(Ord. 16-19; Am. Ord. 19-39)

### **39.16 POLITICAL ACTIVITY.**

(A) No elected official, appointed official, or employee shall compel, coerce or intimidate any elected official, appointed official, or employee to make, or refrain from making, any political contribution. No elected official, appointed official, or employee shall solicit or obtain by coercion any political contribution from employees. Nothing in this subsection shall be interpreted to provide that an elected official, appointed official, or employee is precluded from voluntarily making a contribution or receiving a voluntary contribution.

(B) No employee with contract management authority, property management authority or land use authority shall serve as a paid political consultant, a campaign treasurer, or as a member of the political fundraising campaign committee of any candidate for federal, state, city or county office, or elected office.

(C) No elected officer of the city shall hold any other city office or be employed by the city during the term for which the member was elected.

(D) Nothing in this section shall be construed to prohibit the Governing Body from selecting any current or former mayor or city councilor to represent the city before any other governmental entity.

(E) Employees shall not perform any political activity when on duty. This does not include time used while on paid vacation in accordance with City Personnel Policy and Work Rules.

(F) An elected official, appointed official, or employee shall not require an employee to perform political activity: (1) as part of the employee's duties; (2) as a condition of city employment; or (3) during any time off that is compensated by the city.

(G) An employee shall not be required to participate in any political activity.

(H) An employee shall not be awarded additional compensation or employment benefit in any form to engage in as a part of the employee's official city employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.

(I) Nothing in this section prohibits an employee from engaging in political activity on behalf of the city, pursuant to Section [39.13](#)(A), or engaging in voluntary political activities of the employee's choosing when not on duty.

(J) No elected official or appointed official shall engage in any conduct that would, to an objective third party, constitute an undue threat to an employee's continued employment.

(K) Employees that receive compensation or reimbursement from an elected official or political campaign on behalf of an elected official in excess of \$250 shall be required to report such compensation or reimbursement to the City Manager, which shall include disclosure of the nature of the compensation or reimbursement on a form prescribed by the city.

(L) Any city employee who becomes a certified candidate for municipal elective office of the City of Rio Rancho shall, upon the certification of a declaration of candidacy, take a leave of absence without pay, use accrued vacation time, or both, not later than 35 days prior to the date of the municipal election. If a leave of absence is requested, it shall be granted.

(M) No former mayor or city councilor shall be employed by the city until one year after the expiration of the term for which the member was elected.

(Ord. 16-19; Am. Ord. 19-39)

### **39.17 DISCLOSURE.**

(A) All elected or appointed officials shall be required to file a statement of economic interest with the City Clerk on a form provided by the city, as follows:

(1) Elected officials shall file a statement of economic interest no later than the last Tuesday in January of each year;

(2) Candidates for a City of Rio Rancho municipal office who have not already filed a statement of economic interest in the same calendar year shall file such statement upon submission of a declaration of candidacy for the municipal election; and

(3) Appointed officials shall file a statement of economic interest at the time of filing an application for consideration of appointment and no later than the last Tuesday in January of each year.

(B) Statements of economic interest shall include the following information:

(1) A description of all parcels of real estate within the city in which the person owns any interest including an option to purchase;

(2) All interests in any business organization, either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two percent of the ownership interest of any other business that is doing business with the city in an amount in excess of \$7,500 annually.

(C) Any person required to file a statement herein shall be required to file an amended statement whenever a change in that person's economic interests would require disclosure pursuant to this section. Such persons shall file the amended statement in the manner prescribed above within 30 days of the date of any change in circumstances requiring filing thereof.

(D) All persons required to file a statement hereunder shall comply with the provisions of this section as both a condition to serving in the capacity of an elected or appointed official and to remain eligible to serve in such capacity for the duration of the person's term of office or appointment.

(Ord. 16-19; Am. Ord. 19-39)

### **39.18 COERCION.**

(A) An elected official shall not, directly or by authorizing another to act on his or her behalf, state or imply that the elected official's willingness to meet with a person or organization is dependent on the person or organization making a campaign contribution, donating to a cause favored by the elected official or providing a thing of value to the elected official.

(B) An elected official shall not directly, or by authorizing another to act on the elected official's behalf:

(1) Agree or threaten to take or withhold any city governmental action, as a result of a person's decision to provide or not provide a political contribution; or

(2) State or imply that the elected official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution; or

(3) Agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this chapter, or another financial disclosure provision of state or city law; or

(4) Knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this chapter.

(Ord. 16-19)

### **39.19 REPORTING, INVESTIGATING, AND MAKING DETERMINATIONS PERTAINING TO VIOLATIONS OF THIS CHAPTER.**

(A) Any elected official, appointed official, employee, entity, or member of the public, may submit a complaint of unethical conduct to the City Ethics Panel by delivering to the City Attorney's office a sworn complaint alleging facts which, if true, would constitute a violation of this chapter. The City Attorney's office will forward all such sworn complaints to the city's Contract Ethics Official (Ethics Official). The Ethics Official shall refer all matters regarding employees to the city's Human Resources Department.

(B) The Ethics Official shall investigate all applicable sworn complaints forwarded to them and make one of the following recommendations regarding the complaint:

(1) Unsubstantiated claim under this chapter; or

(2) Substantiated claim under this chapter.

(C) If unsubstantiated claim is the recommendation made by the Ethics Official, he or she shall produce a report reflecting their findings and details of the investigation. An unsubstantiated claim shall not be forwarded to the Ethics Panel unless necessary for the determination of a frivolous claim.

(D) Upon the completion of an investigation, the Ethics Official may determine that a claim is substantiated. At such time, the Ethics Official will produce a report which contains his or her findings and recommendations. The Ethics Panel shall conduct a public hearing of all substantiated claims and shall decide, by majority vote, if a provision(s) under this chapter has been violated. Penalties shall be determined pursuant to Section [39.20](#). The Ethics Official shall be present at the public hearing in order to respond to questions from the Ethics Panel regarding his or her findings and recommendations. The complaining party and the respondent to the complaint shall be provided notice via certified mail, to any and all hearings. The respondent and/or a legal representative shall be afforded the opportunity to respond to the complaint at public hearing.

(E) If an individual or entity files two or more unsubstantiated complaints directed at the same individual for the purpose of harassment or to otherwise cause the individual public shame or embarrassment, the Ethics Official may make a recommendation to the Ethics Panel. If the Ethics Official recommends a public hearing, notice shall be provided to the complaining party no later than

14 calendar days prior to the scheduled public hearing. The Ethics Panel shall conduct the public hearing in order to determine if the complaints are frivolous and if the complaints were intended to annoy, harass or otherwise cause the targeted individual public shame or embarrassment. If the Ethics Panel determines by majority vote that the complaints are frivolous and intended to annoy, harass or otherwise cause the targeted individual shame or embarrassment, they may prescribe a penalty in accordance with Section [39.20](#) that may be appealed to the Thirteenth Judicial District Court.

(Ord. 16-19)

### **39.20 CITY ETHICS PANEL.**

(A) There shall be created a City of Rio Rancho Ethics Panel that shall consist of three members plus one alternate. It is desired that two Panel members (excluding alternate) will be licensed attorneys. At a minimum one member of the Panel (excluding alternate) shall be a licensed attorney. The members of the Panel shall be appointed by the City Manager subject to confirmation by the Governing Body. The members of the Panel shall not be affiliated with city government in any capacity, including, but not limited to, employment (including employment for which the salary is in any way funded by or through the city), appointment, or election. The members of the Ethics Panel may not hold elected public office or office with any political party within the city. Each member shall serve a term of three years, subject to reappointment thereafter.

(B) The Ethics Panel shall annually elect its own chair. If any member of the Ethics Panel petitions the Panel for a hearing and advice regarding his or her own conduct or the conduct of others, such member shall not be eligible to sit in such cases, and the alternate member shall be seated when the need arises.

(C) The jurisdiction of the Ethics Panel is limited to acting within the scope of matters covered by this chapter, but may periodically review and recommend amendments to this chapter.

(D) The Ethics Panel shall adopt rules of procedure for conducting hearings pursuant to this chapter. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Rio Rancho and shall be reviewed by the City Attorney.

(E) The Ethics Panel shall have the power to issue administrative subpoenas compelling attendance of witnesses at hearings and the production of documents, and the authority to seek enforcement of those subpoenas by the Thirteenth Judicial District Court.

(F) If the Ethics Panel finds, by a preponderance of evidence and upon a majority vote, that an elected official or appointed official has violated this chapter, the Ethics Panel may impose any of the following penalties after the written findings of fact and conclusions of law:

(1) A civil fine not to exceed \$500; or

(2) A written finding of censure; or

(3) A referral to the District Attorney or appropriate governmental office for commencement of criminal or other proceedings; or

(4) A recommendation to the District Attorney that proceedings to remove the person from elected office be commenced pursuant to NMSA 1978 § [10-4-1](#) et seq. (as amended).

(G) No action may be taken by the Ethics Official or Ethics Panel on any complaint that is filed later than one year after violation of this chapter is alleged to have occurred or that is filed more than six months from the date of the discovery of the alleged violation, upon due diligence by the complaining party, of facts constituting a violation, whichever event occurs later.

(H) No sworn complaints can be submitted, or will be accepted by the City Attorney's office, between the fifty-sixth day preceding the city's March regular election and the date of the March regular election or, in case of a required run-off election, the date of the corresponding run-off election.

(I) The Ethics Panel may also provide advisory opinions regarding the applicability or interpretation of the provisions of this chapter upon the request of any elected official, appointed official, or city employee, and may confer or request legal interpretation from the City Attorney. The City Attorney may refer such requests to the Ethics Official.

(J) On an annual basis the Governing Body shall be provided with a report stating the number and type of complaints that were submitted alleging a violation of this chapter, as well as the number of hearings and their outcomes.

(K) A member of the Ethics Panel may be removed by the Governing Body at any time.

(L) A vacancy on the Ethics Panel shall be filled in the same manner as the initial appointment and the appointment shall continue for the remainder of the unexpired term of the departing Panel member.

(M) Members of the Ethics Panel shall not receive any salary or compensation for services.

(Ord. 16-19)

### **39.21 RIGHT OF APPEAL.**

Any decision of the Ethics Panel finding a violation of this chapter may be appealed to the Thirteenth Judicial District Court pursuant to NMSA 1978 § [39-3-1.1](#) (1998, as amended).



(Ord. 16-19)

### **39.22 NON-RETALIATION.**

The Governing Body does not tolerate retaliation, workforce discrimination or harassment of any kind against any person who has reported a violation of this chapter. This non-retaliation provision applies whether the complaint is ultimately determined to be unsubstantiated or substantiated. All elected officials, appointed officials, or employees are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone who believes that they have been subject to workplace discrimination or harassment of any kind or that has been retaliated against in violation of this chapter should submit a complaint of unethical conduct to the Ethics Panel by delivering to the City Attorney's office a sworn complaint.

(Ord. 16-19)

### **39.23 EX PARTE COMMUNICATIONS.**

#### **(A) *Ex parte communications prohibited.***

(1) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to the city's Development Code, Zoning Code, Building Code, or any other city ordinance shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside of the hearing and outside of the presence of all other interested parties concerning the pending matter. A pending matter does not include an ordinance on first or second reading.

(2) An administrative adjudicatory matter is one that involves the use of a discretionary standard, as specified in the Development Code or other city ordinance, to an application for discretionary approval.

(3) Notwithstanding the provisions of subsection (A)(1) of this section, ex parte communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application, shall not be prohibited if the elected official or appointed official reasonably believes that no party will gain an advantage as a result of the ex parte communication and promptly notifies all other parties of the substance of the ex parte communication.

(4) An elected official or appointed official who receives or who makes or knowingly causes to make a communication prohibited by this chapter shall disclose the communication to all parties and give other parties an opportunity to respond.

#### **(B) *Recusal.***

(1) An elected official or appointed official shall recuse himself or herself in any pending administrative adjudicatory matter in which the official is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the official can make a fair and impartial decision, including:

(a) When the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means the predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the official unable to exercise his or her functions impartially; or

(b) When the official has a pecuniary or financial interest in the outcome of the proceeding; or

(c) When, during the previous employment, the official served as an attorney, advisor, consultant or witness in the matter of controversy (previous employment is employment during the previous 12 months); or

(d) When the official announced how he or she would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

(2) An elected official or appointed official shall not be required to recuse herself or himself in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an elected official shall not be required to recuse herself or himself in any pending administrative adjudicatory matter merely because the elected official made representations during a political campaign on viewpoints on public policy that an application may raise.

(3) The elected official or appointed official recusing himself or herself shall disclose the specific reason for a recusal contemporaneous with the recusal.

(4) If, prior to the hearing, an elected official or appointed official fails to recuse herself or himself when it appears that grounds exist, a party shall promptly notify the elected official or appointed official of the grounds for recusal. If the elected official or appointed official declines to recuse himself or herself upon request of a party, the official shall provide a full explanation in support of his refusal to recuse himself or herself.

(5) If, during the hearing, an elected official or appointed official fails to recuse himself or herself when it appears that grounds exist, a party shall promptly notify the Chair of the grounds for

recusal. If the elected official or appointed official declines to recuse herself or himself, the Chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.

(Ord. 16-19)

### **39.24 RESTRICTIONS ON THE GOVERNING BODY; ADMINISTRATION OF THE PERSONNEL SYSTEM, MANAGEMENT.**

The Governing Body shall not perform, collectively or individually, general executive management functions in the administration of city government; these functions shall be delegated to the City Manager including administration of the personnel system. This paragraph shall not apply to matters of policy, the responsibility and authority of the Governing Body to approve budgets and expenditures, contracts outside the signature authority of the City Manager, and matters that, in the discretion of the Governing Body, while they may involve management issues, are of citywide importance.

(Ord. 16-19)

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The Rio Rancho Municipal Code is current through Ordinance 23-14, passed August 10, 2023.

Disclaimer: The City Clerk's office has the official version of the Rio Rancho Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.rnm.gov/>

City Telephone: (505) 891-5004

[Code Publishing Company](#)