CALLED MEETING OF THE CITY COMMISSION
MONDAY, OCTOBER 14, 2013 @ 5:15 P.M.
CITY COMMISSION CHAMBERS, 214 S. LOVE STREET

Present and answering roll call: Mayor Drummond, Commissioners Trujillo, Gandy, Granath, and Benge.

Also present: City Manager James Williams, Assistant City Manager Jared Cobb, Finance Director Mashell Stephens, City Clerk Carol Ann Hogue, Chief of Police Danny Bryant, Administrative Assistant Imelda Gutierrez and City Attorney Patrick McMahon.

Call to Order: The meeting was called to order by Mayor Drummond at 5:15 p.m.

Invocation: Commissioner Gandy gave the invocation

Approval of Agenda: Mayor Drummond asked for a motion to approve the agenda as submitted. Commissioner Trujillo so moved to approve the agenda. Commissioner Benge seconded. Motion was approved.

ACTION ITEMS:

Consideration of Approval of Transfer of Ownership & Location of Liquor License No. 0786 with Package Sales to Allsup's Convenience Stores, Inc., dba Allsup's #117, 1608 S. Main Street, Lovington, NM: Mayor Drummond called for a motion to approve the transfer of ownership and location of liquor license #0786 with package sales to Allsup's Convenience Stores #117, 1608 S. Main, Lovington, NM. Commissioner Trujillo so moved. Commissioner Granath seconded. Motion was approved.

PUBLIC COMMENT:

Kevin Bjerke from Clovis, NM on behalf of Allsup's Convenience Stores addressed the Commissioners to give thanks and to offer his services as professional and as a customer. Mr. Bjerke stated that he has worked for Allsup's for 21 years.

ADJOURNMENT:
There being no further business the meeting adjourned at 5.20 p.m. for a 10 minute recess.

APPROVED: _____
DIXIE DRUMMOND, MAYOR

ATTEST: _____
CAROL ANN HOGUE, CITY CLERK

REGULAR MEETING OF THE CITY COMMISSION
MONDAY, OCTOBER 14, 2013 @ 5:30 P.M.
CITY COMMISSION CHAMBERS, 214 S. LOVE STREET

Present and answering roll call: Mayor Drummond, Commissioners Trujillo, Gandy, Granath, and Benge.

Also present: City Manager James Williams, Assistant City Manager Jared Cobb, Finance Director Mashell Stephens, City Clerk Carol Ann Hogue, Chief of Police Danny Bryant, Administrative Assistant Imelda Gutierrez and City Attorney Patrick McMahon.

Call to Order: The meeting was called to order by Mayor Drummond at 5:30 p.m.

Invocation: Commissioner Trujillo gave the invocation

Pledge of Allegiance: Commissioner Trujillo led the pledge

Approval of Agenda: Mayor Drummond asked for a motion to approve the agenda with the changes. Commissioner Gandy so moved to remove the non-action item: Discussion of Lea County Fair Board Presentation and add an action item: Consideration of Approval of City of Lovington & Southeastern New Mexico Economic Development District/COG Bond Sale Agreement. Commissioner Trujillo seconded. Motion was approved.

Approval of the Regular Minutes of September 23, 2013: Mayor Drummond asked for a motion for approval of the regular minutes of September 23, 2013. Commissioner Gandy so moved. Commissioner Trujillo seconded. Motion was approved.

NON-ACTION ITEMS:

Discussion of City Street Lights: City Manager Williams addressed the Commissioners stating that the City researched the costs associated with street light operation. The City contacted LCEC to review the monthly bill and to provide us with a map of street light locations. The Residential lighting is the bulk of the monthly lighting bill with a total of 789 (150W) lights throughout the City. The City is also responsible for the lighting along Avenue D and Main Street. These sections of streets are illuminated using 230 (310W) lights. The average distance determined between residential light poles is 310 feet. The City believes that the best approach to installing additional lighting is to create a baseline set of criteria, such as distance between light poles that will be used when the City receives requests for additional lighting. No action was taken.

- 150W Light – Monthly Cost $8.83/Light; Annual Cost $105.96/Light
- 310W Light – Monthly Cost $13.69/Light; Annual Cost $164.28/Light

Discussion of Commercial & Avenue D Property Lease: City Manager Williams addressed the Commissioners stating that the City entered into a lease agreement with the Lovington Public Schools in 1998 for the tract of land on the Northwest corner of Commercial and Avenue D which renews each year. It is leased for a $1.00 per year. The Commissioners wish to terminate the lease agreement. No action was taken.

Discussion of Inflatable Structure Use Policy: Commissioner Granath on behalf of Lovington Parks & Recreation Board stated that the members approved two sites at the Chaparral Park to place the inflatable structures that have power sources and must have a two week advanced reservation and a $100 deposit and a permit. The board members have proposed a policy that was approved at the Parks & Recreation Board meeting on September 30, 2013. City Manager Williams addressed the Commissioners stating that an approved vendor must have a current City of Lovington business license and submit proof of insurance with minimum liability coverage of one million dollars ($1,000,000) with the City of Lovington included as an additional inured. The list of the approved vendors will be available on the City website or upon request at City Hall. If there is a large demand they will consider adding other sites. Mayor Drummond asked to bring this item back on the next regular meeting. No action was taken.

Discussion of Parks & Recreation Rules & Regulations: City Manager Williams addressed the Commissioners stating that the Parks & Recreation Board have prepared an ordinance draft to address City parks & regulation rules. The listed rules have been posted at the parks for multiple years but were never included in City ordinance. Board Member Marla Price addressed the Commissioners stated her concern about the passenger watercrafts that was approved at the Parks & Recreation Board meeting on September 30, 2013. Mrs. Price does not think it is safe for children. Mayor Drummond stated that they will allow it for now and see how it works out and bring back to the next regular meeting. No action was taken.

Discussion of Wastewater Fees: Commissioner Benge stated her concern about the properties that are accumulating additional mobile homes, RV's and miscellaneous, residential rentals. Some of these properties may only be paying one wastewater fee. The topic for discussion is if these property owners should be charges for the additional users rather than the typical single family residence. Commissioner Gandy suggested considering to change the charge of residential rates or maybe commercial rates to these property owners but will be difficult to address this issue. No action was taken.

ACTION ITEMS:

Consideration of Approval of City of Lovington & Southeastern New Mexico Economic Development District/COG Bond Sale Agreement: Mayor Drummond called for a motion to approve the City & Southeastern New Mexico Economic Development District/COG Bond Sale Agreement. City Manager Williams addressed the Commissioners to request on behalf of the City to serve as the City's Fiscal Agent for the Capital Outlay Appropriation for the Radio Read Water Meter Project. City Attorney and Council of Government of Roswell have given their approval to enter into an agreement. Commissioner Trujillo so moved. Commissioner Granath seconded. Motion was approved.

Consideration of Approval of Setback Variance – 121 E. Ave N: Mayor Drummond called for a motion to approve the setback variance at 121 E. Ave N. City Manager Williams addressed the Commissioners stating that the request for a variance is that the current City Ordinance designates that the rear yard as the section opposite the street frontage that has the least dimension. As the lot is platted, the rear yard setback should be located on the west side of the property. The property owner has requested that the rear yard be allowed to be on the north side of the property to be in compliance with the setback requirements. The Lovington Planning & Zoning recommended approval of this variance on October 7, 2013 meeting. Commissioner Trujillo so moved. Commissioner Benge seconded. Motion was approved.

Consideration of Approval of Resolution 2013-3 Inter-Budget Transfer: Mayor Drummond called for a motion to approve the resolution 2013-3 Inter-Budget Transfer. City Manager Williams addressed the Commissioners stating that in order to utilize the LEDA funds for approved projects it is necessary to transfer the designated funding from the General Fund (101) into a newly developed Economic Development Fund (311). The transfer amount is $885,886 from the General Fund (101) to Economic Development Fund (311). Commissioner Trujillo so moved. Commissioner Gandy seconded. Motion was approved.

Consideration of Approval of Ordinance 515 – Annexation of 26.4 Acres NE of 17th St & Brian Urlacher: Mayor Drummond called for a motion to approve the Ordinance 515 – Annexation of 26.4 Acres NE of 17th & Brian Urlacher. Robert Fierro on behalf of Fierro & Co addressed the Commissioners to request to annex in 26.4 acres. The Lovington Planning & Zoning Board has recommended for approval on October 7, 2013 meeting. City Manager Williams stated that the 26.4 acres will be annexed in as single-family residential at this time as per the current ordinance. Commissioner Trujillo so moved. Commissioners Granath seconded. Motion was approved.

Consideration of Approval of Ordinance 516 – Omitting Chapter 5.40 – Solicitors, Canvassers & Peddlers & Amending Chapter 5.56 Transient & Itinerant Vendors & Merchants: Mayor Drummond called for a motion to approve Ordinance 516 – Omitting Chapter 5.40 and amending Chapter 5.56. Commissioner Benge so moved. Commissioner Gandy seconded. Motion was approved.

Consideration of Approval of Professional Services Agreement – 40 Year Water Plan Development: Mayor Drummond called for a motion to approve the professional services agreement – 40 year water plan. City Manager Williams addressed the Commissioners stating that this was a budgeted item this year. The City was in contact with John Shomaker & Associates in regards to the development of the 40 year water plan. The plan, once initiated should only take four weeks to be completed. This project has a funding of approximately $20,000 - $30,000 for the current fiscal year budget. Commissioner Granath so moved. Commissioner Trujillo seconded. Motion was approved.

Consideration of Approval of Memorandum of Understanding between Lea County & the City of Lovington for funding of Outdoor Recreational Facilities: Mayor Drummond called for a motion to approve the MOU between Lea County & the City of Lovington for funding of outdoor recreational facilities. Commissioner Trujillo so moved. Commissioner Granath seconded. City Manager Williams addressed the Commissioners stating that this was presented to the Lovington Parks & recreation Board Members. Lea County has dedicated $100,000 in funding to the City for improvement of the Parks & Recreation facilities during fiscal year 2013-2014. The board members have approved this money to be spent on construction for restrooms at Avenue D Park and the remaining funds would be utilized on the purchase and installation of shade structures at the smaller parks as well as tables and benches. The expenditures shall be completed and submitted to Lea County prior to May 31, 2014. City Attorney McMahon suggested considering making changes on paragraph 5 on the agreement. Commissioner Trujillo so moved to amend and remove the second paragraph on chapter 5: Termination of Memorandum of Understanding. Commissioner Granath seconded. Motion was approved.

Consideration of Approval of Lodger's Tax Board Recommendations: Mayor Drummond called for a motion to approve the Lodger's Tax Board Recommendations. Commissioner Trujillo so moved. Commissioner Gandy seconded. Motion was approved.

	Amount Requested	Recommended Funding
Lea County Museum	$10,000	**$6,667**
Wild Bunch Tournament	$3,000	**$2,000**
Lovington MainStreet	$12,062	**$8,041**
Chamber of Commerce	$8,000	**$5,333**
Total	***$33,062.00***	***$22,041.00***

Consideration of Approval of Accounts Payables: Mayor Drummond called for a motion to approve the accounts payables. Commissioner Gandy so moved. Commissioner Benge seconded. Motion was approved.

PUBLIC COMMENT:

Marla Price addressed the Commissioners stating that Harold Runnels Ballpark was traded in for the street easement to build a parking lot at Llano Elementary School on 1st Street in 2007. Ross Black was still Superintendent at the Lovington Public Schools

OTHER:

- Commissioner Granath stated his concern on the street signs stating the school zone when children are present during school hours.
- Commissioner Gandy stated his concerns about barricades on South 9th Street.
- Commissioner Benge mentioned about the Ordinances coming up at the meeting on October 28th.
- Assistant City Manager Jared Cobb mentioned that he went to read to an Elementary School and the third graders are aware about our Ordinances as well.
- City Manager Williams mentioned that a citizen's survey for the Lovington Parks & Recreation will be sending out with the water bills and on the City website. The Central Plaza phase one will be out for bidding on be opened on October 29th. The Auditors will be here the week of October 21st. The road project funds from NMDOT will be tested.
- Kallie Richards stated there are no exceptions for any utility trucks that are parked at residential zones.

ADJOURNMENT:
There being no further business the meeting adjourned at 6:25 p.m.

APPROVED: _____
DIXIE DRUMMOND, MAYOR

ATTEST: _____
CAROL ANN HOGUE, CITY CLERK

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☐ **ORDINANCE** ☐ **PROCLAMATION** ☑ **INFORMATION** ☐ **OTHER ACTION**

SUBJECT: Lea County Fair Board Presentation to City
DEPARTMENT: Lea County Fair Board
SUBMITTED BY: Member Randy Pettigrew
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

The Lea County Fair Board has requested to make a brief presentation to the City Commission.

FISCAL IMPACT: *REVIEWED BY:* _____
(Finance Director)

ATTACHMENTS:

RECOMMENDATION:
Discussion only.

_____ **Department Head**

_____ **City Manager**

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☐ **ORDINANCE** ☐ **PROCLAMATION** ☑ **INFORMATION** ☐ **OTHER ACTION**

SUBJECT: LEDA Fund and Intergovernmental Agreement Discussion
DEPARTMENT: Executive
SUBMITTED BY: James R. Williams, City Manager
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

The Due Diligence Committee of the Lovington EDC has reviewed two separate projects that have requested funding from the LEDA. A final vote of the full EDC board on a recommendation for either project will be conducted on October 30, 2013. Staff would like to present a discussion of both of these requests to the City Commission.

In addition, one of these projects has received partial funding through the State of New Mexico. In order for this project to receive funding, the City must adopt an ordinance which will approve an Intergovernmental Agreement and a Project Participation Agreement.

FISCAL IMPACT: *REVIEWED BY:* _____
(Finance Director)

ATTACHMENTS:

Lovington MainStreet Executive Summary
IGA Ordinance, IGA, and PPA

RECOMMENDATION:

Discussion only.

_____ **Department Head**

_____ **City Manager**

Executive Summary

Project Narrative

The historic Lea Theatre, located at the corner of Main and Central Streets in Lovington, New Mexico was built in 1948 and is listed on the National Register of Historic Places.The movie theater has been independently operated since the 1980s by the Joy family. The Joy family has offered the theater for sale in 2013. Lovington MainStreet program has negotiated a purchase option of $250,000 to acquire the theater for rehabilitation and continued public benefit. The current purchase option expires November 30, 2013.

Lovington MainStreet, in partnership with the New Mexico MainStreet program, has begun preliminary planning for the short term and long term rehabilitation of the Lea Theatre. The immediate goals of Lovington MainStreet are to acquire the theater with financing provided by the Lovington Economic Development Corporation LEDA program and to make necessary digital upgrades to the projection and sound systems so that the theater can continue operation as a cinema. Lovington MainStreet has procured an estimate for the digital system upgrades from Sonic Systems of Iola, Kansas. The digital systems upgrades for full digital projection with 3D upgrades and satellite live streaming capacity is estimated at approximately $90,000. (See attached for first phase rehabilitation pro forma spreadsheets).

A more permanent goal of Lovington MainStreet is to transform the Lea Theatre into a multi-purpose performing arts theater that can offer feature films, theater performances, concerts, variety shows, special events, community meetings, and other entertainments.

The Lea Theatre performing arts rehabilitation planning process is in the preliminary stages and cost estimates are being developed as more systematic appraisals of the operating systems of the theater (roof, electrical, plumbing, seating, etc.) are being performed now. It is expected that full upgrades of the Lea Theatre will cost hundreds of thousands of dollars or more.

At present, Lovington MainStreet is proposing to secure seed acquisition and digital upgrade funding from the Lovington Economic Development Corporation and the City of Lovington (LEDA program) for the first phase of the project. The seed funding request is estimated at $450,000. Lovington MainStreet intends to use this budget to acquire the property, make necessary cinema upgrades and reopen the Lea Theatre under a new management plan (see attached) on or before March 31, 2014.

A bridge bank loan will be secured from a local lender for a three-year term with pledged annual payments of approximately $150,000 from the LEDA program in order to cash flow the seed funding phase.

The second phase of funding for a more permanent rehabilitation to a performing arts center will begin immediately upon the successful acquisition of the property. A Lea Theatre Foundation is proposed as a non-profit, community-based enterprise to attract individual, family, corporate, institutional, foundation and other donors to contribute to the project. Lovington MainStreet has begun the process of developing a foundation with preliminary internet research and technical assistance from New Mexico MainStreet. It is anticipated that the Lea Theatre Foundation will ultimately recoup the seed funding granted by the City's LEDA fund according to negotiations with the LEDA Due Diligence Committee, Lovington Economic Development Corporation and City of Lovington. Additionally, Lovington MainStreet will seek advice, funding, and technical assistance from other major New Mexico Foundations, including the Maddox Foundation of Hobbs and the McCune Charitable Foundation of Santa Fe. (Preliminary architectural concepts attached).

Lovington MainStreet anticipates a two to three-year time frame for the completion of the financing, fund-raising, planning and rehabilitation of the historic Lea Theatre. During this development period, Lovington MainStreet intends to continue operation of the theater, as construction allows, as a first-run movie theater for public benefit. Lovington MainStreet's goal is to engage community partners, city and county governments, organizations, schools and many volunteers to transform the historic Lea Theatre into a significant community asset that can enhance the business potential and lifestyle appeal of Lovington, provide dynamic entertainment, and build community pride.

ORDINANCE NUMBER

AN ORDINANCE OF THE CITY OF LOVINGTON AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT AND A PROJECT PARTICIPATION AGREEMENT ACCEPTING FROM THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT $100,000.00 FOR ECONOMIC ASSISTANCE FOR IMPROVEMENT OF LOADING AND UNLOADING ZONE ADJACENT TO LOVINGTON WAREHOUSE AND THE RAILROAD

WHEREAS, the ***City of Lovington*** has passed Ordinance No. 495, relating to Economic Development Planning; and

WHEREAS, the purpose of the Economic Development Plan is to "allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources;" and

WHEREAS, ***Lovington Warehouse*** meets the requirements as stated in Ordinance No. 495, as a qualifying entity by being "an industry for manufacturing, processing, or assembling of any agriculture or manufactured products;" and

WHEREAS, ***Lovington Warehouse*** serves a number of industries and businesses and improvement of the Rail loading and unloading will allow the creation of jobs for ***Lovington Warehouse***, as well as for tenants and lessees; and

WHEREAS, the State of New Mexico Economic Development Department desires to support ***Unloading and Loading Zone Project*** through its 2013 Capital Outlay Fund by entering into a Contract with the ***City of Lovington*** to contribute $100,000.00 toward the construction of the ***Unloading and Loading Zone Project*** ; and

WHEREAS, the ***City of Lovington City Commission*** wishes to enter into an agreement with ***Lovington Warehouse,*** in the form of a Project Participation Agreement, as provided for in Ordinance No. 495.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE *CITY OF Lovington*, NEW MEXICO:

Section 1. That the Mayor is authorized to execute on behalf of the ***Lovington City Commission*** an Intergovernmental Agreement with the State of New Mexico Economic Development Department to accept $100,000.00 under Ordinance 495 to be used specifically for the ***Unloading and Loading Zone Project*** .

Section 2. That the Mayor is authorized to execute on behalf of the ***City of Lovington Commission*** a Project Participation Agreement with ***Lovington Warehouse***, user of the ***Unloading and Loading Zone Project*** .

Section 3. Repealer. All ordinances or parts of ordinances or provisions of the ***City of Lovington Code*** in conflict or inconsistent herewith be, and the same hereby are repealed to the extent only of such conflict or inconsistency, and as to all other ordinances, this ordinance is hereby made cumulative. This repealer shall not be construed to revive any ordinance or parts of any ordinance heretofore repealed.

Section 4. Severability. If any section, paragraph, clause or provision of this ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

Section 5. Effective date. This ordinance shall be effective five days after publication.

PASSED, ADOPTED, AND APPROVED this _____ day of _____, 2013.

_____
Mayor Dixie Drummond

CITY SEAL

ATTEST:

_____
Clerk

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND CITY OF LOVINGTON INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (Agreement) entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (EDD), acting through its cabinet secretary, and the City of Lovington, and collectively referred to as "the Parties" with reference to the following facts.

SECTION 1: RECITALS:

WHEREAS, the New Mexico State Legislature, pursuant to Laws 2009, Chapter 125, Section 22(6): "to provide grants to political subdivisions of the state for infrastructure improvements necessary to attract new companies or expand existing businesses to achieve job growth pursuant to the Local Economic Development Act statewide"; and

WHEREAS, the New Mexico State Legislature, pursuant to Laws 2013 Chapter 227 Section 5 to provide grants to political subdivisions of the state to achieve job growth by attracting new companies or expanding existing businesses pursuant to the Local Economic Development Act"; and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts…"; and

WHEREAS, the **City of Lovington** has adopted LEDA by Ordinance No. 495 which established the **City of Lovington** Economic Development Act Plan that promotes economic development within the **City of Lovington**; and

WHEREAS, the **City of Lovington** has adopted Ordinance No. **[Insert Ordinance Number]** ("Ordinance") to approve the economic development project ("Project") proposed by **Lovington Warehouse**, it is understood by the Parties that the source of the Appropriation is severance tax bond proceeds appropriated by the New Mexico Legislature to DFA as described above.

SECTION 2. SCOPE OF WORK:

The **City of Lovington** will act as fiscal agent for the Appropriation supporting the Project. The **City of Lovington** will be reimbursed, pursuant to Section 5-10-3(D) of LEDA, for costs and expenses incurred to grade and pave eight hundred ten (810) feet by forty (40) feet on both sides of existing track, to provide loading and unloading capabilities. In exchange for the Appropriation, the Company certifies it will provide warehouse space and associated labor and create a minimum of **5** jobs, by themselves and/or their tenants or lessees within the **City of Lovington** by the end of November 2015.

Review: The City of Lovington will review project timeline, progress and job creation annually until two year anniversary of this agreement. Job creation reporting will be supported by reports and documentation from the New Mexico Department of Workforce Solutions demonstrating the headcount of the operation to demonstrate compliance with this Agreement at each review cycle annually, and another at thirty (30) days prior to the anniversary date of this Agreement, for a period of two years.

EDD and the **City of Lovington** agree that failure of the Qualifying Entity to create and/or maintain the minimum number of jobs, and failure of the qualifying entity to meet its obligations set forth under the PPA entered into by and between the **City of Lovington** and **Lovington Warehouse** on _____, will result in a violation of the terms and conditions of this Agreement. Such violation requires that the City of Lovington foreclose on the security interest. Any monies received by the **City of Lovington** as a result of the sale or foreclosure of the security and any funds recovered by the **City of Lovington** pursuant to said promissory note and security agreement shall be returned to EDD within thirty (30) days after they are received by the **City of Lovington**. Any property acquired or developed by the **City of Lovington** as a result of this Project, shall be used by the **City of Lovington** for future economic development purposes only. All the terms, conditions and requirements set forth under the PPA are incorporated into this Agreement by reference. **[Insert Security Interest]**

SECTION 3. CITY OF LOVINGTON RESPONSIBILITIES:

The **City of Lovington** shall:

1. Request to be reimbursed from the Appropriation for economic development purposes as set forth in the Appropriation, the Ordinance, the PPA and this Agreement. The **City of Lovington** shall submit requests for reimbursement, with supporting documentation, for activities associated with the Project to EDD. EDD shall review requests for reimbursement and certify to DFA, in writing, compliance with the Appropriation, the Ordinance, the PPA and this Agreement. EDD shall then transmit the requests for reimbursement to DFA's Capital Outlay Bureau, Local Government Division (the "Bureau"). The Bureau will forward the requests for payment, supporting documentation and EDD certification to the New Mexico Board of Finance for payment to the Village.

2. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

3. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:

   a. distribute the funds transferred to the **City of Lovington** by Board of Finance to **Lovington Warehouse** Project

   b. account for receipts and disbursements of said monies; and

   c. provide EDD with the required financial documentation pertaining to this disbursement.

   d. submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the **City of Lovington** Commission accepting **Lovington Warehouse** Project as a qualifying entity for LEDA, with the

accompanying endorsed Project Application and PPA entered into by the **City of Lovington** and **Lovington Warehouse** , a fully executed and copy of the security interest by way of a mortgage on the real property, and copies of invoices and other documentation as required by EDD within the time required;

4. Not impose any obligations on EDD with respect to the administration of this Project, other than the reimbursement of funds described in this agreement.

SECTION 4. CITY OF LOVINGTON CERTIFICATIONS:

As Fiscal Agent, the **City of Lovington** hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines, and requirements with respect to the acceptance and use of State funds, including but not limited to Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause";

B. It has the legal authority to receive and expend the funds;

C. It will enforce the provisions of Ordinance No.**[Insert Ordinance Number]** approving a LEDA Project for **Lovington Warehouse** Project involving grading and paving**,** creating and retaining approximately **5** new job-years within the **City of Lovington** over the end of **November 2015**;

E. It has exercised due diligence in certifying that **Lovington Warehouose** Project is a viable economic development initiative with potential long term economic development benefits, The **City of Lovington** will provide EDD all documentation and references to expertise it has relied upon in approving this Project;

F. It has entered into a PPA requiring (1) a substantive contribution of value from the qualifying entity, (2) the security provided to the **City of Lovington** by the qualifying entity in the form of a lien, mortgage or other indenture, (3) the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement, (4) a schedule for project development and completion, including measurable goals and time limits for

those goals, and (5) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory. The qualifying entity's substantive contribution may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

G. It has obtained all financial documentation necessary to protect the **City of Lovington** investment under this project;

H. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined in Section 2 - Purpose of Agreement and Section 3 - Scope of Work stated above;

I. It will notify EDD of any default on the part of **Lovington Warehouse** within 10 days of the event of default;

J. It will comply with the State Procurement Code and local procurement codes and will keep files of all related procurement documents, including but not limited to requests for professional services, advertisements, minutes of pertinent meetings, selection and award criteria, contacts, subcontracts and agreements;

K. No member, officer or employee of the **City of Lovington** or its designees or agents, no member of the governing body of the locality of which the program is situation, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The **City of Lovington** shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification;

L. Any monies received by the **City of Lovington** as a result of the sale or foreclosure of the security and any funds recovered by the **City of Lovington** pursuant to said promissory note and security agreement shall be returned to EDD within thirty (30) days after they are received by the **City of Lovington.** Any property acquired or developed by the **City of Lovington** as a result of this Project, shall be used by the **City**

of Lovington for future economic development purposes only.

SECTION 5. EDD RESPONSIBILITES:

A. EDD shall review requests for reimbursement and certify to DFA, in writing, compliance with the Appropriation, the Ordinance, the PPA and this Agreement. EDD shall then transmit the requests for reimbursement to DFA's Capitol Outlay Bureau, Local Government Division (the "Bureau"). The Bureau will forward the requests for payment, supporting documentation and EDD certification to the New Mexico Board of Finance for payment to the **City of Lovington**.

B. EDD shall, at their discretion, review and audit the Project if it is deemed to be necessary or desirable.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on November 30, 2015.

SECTION 7. LIABILITY:

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. The **City of Lovington** and EDD may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the party responsible for payment.

SECTION 8. DISPOSTION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The **City of Lovington** shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require,

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the **City of Lovington**, the **City of Lovington** shall return said funds shall revert in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City of Lovington shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The City of Lovington shall submit bi-annual reports during the life of this Agreement to EDD respecting direct and indirect job creation attributable to the State appropriation and a Final Report to EDD either on or before the termination of this Agreement or upon final reimbursement to the **City of Lovington**, whichever occurs first. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by EDD.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement. shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:
Antoinette Vigil, Finance Development Team Leader
Joseph M. Montoya State Office Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505

To The **City of Lovington**
James R. Williams
214 S. Love Street
Lovington, NM 88260

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of New Mexico.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

CITY OF LOVINGTON , NEW MEXICO

By:_____

Its: Mayor_____

Date:_____

By:_____

Its: Attorney for the City of Lovington

ECONOMIC DEVELOPMENT DEPARTMENT

By:_____

Its: Cabinet Secretary

Date:_____

By: _____

Its: General Counsel

PROJECT PARTICIPATION AGREEMENT

The City of Lovington, NEW MEXICO and Lovington Warehouse a New Mexico corporation (the Project Party), agree:

1. Recitals:

A. Pursuant to the Local Economic Development Act, NMSA 1978, §§ 5-10-1 through 5-10-13, (LEDA); the City of Lovington adopted the Ordinance #495, authorizing the City of Lovington to consider applications for economic development assistance; and Ordinance No. [Note New Ordinance Number] approving an Economic Development Project.

B. The Project Party has submitted an application to the City of Lovington for assistance under the LEDA Ordinance. In the application, the Project Party has proposed that the project will grade and pave eight hundred ten (810) forty (40) feet wide on both sides of the railroad track which it will own and develop in accordance with the Application for Development Incentives Plan. The application also proposes that the City of Lovington act as Fiscal Agent for approximately 2 years granted by the City of Lovington through the Economic Development Department. The Project Party will then develop the property using the grant monies to build loading and unloading areas from the railroad to Lovington Warehouse.

C. The City of Lovington has adopted Ordinance No. [X] finding that the Project Party is a qualifying entity as defined in Section 5-10-3 (G) NMSA 1978 and approving this Project Participation Agreement (this agreement) as meeting the requirements of LEDA.

2. Contribution by Lovington Warehouse: In order to implement the Project, the City of Lovington will act as Fiscal Agent and Project Management to the Project entity after certification.

3. Substantive Contribution from the Project Party: The Project Party will provide a minimum of 5 jobs within the City of Lovington. These jobs will be provided directly through the Project Party and or through its Tenants of Lessees. Additionally the Project Party agrees to provide a minimum of seventy thousand (70,000) square feet of warehouse space for warehousing and distribution services at a discounted rate not to exceed two dollars ($2) per square foot for the duration of this agreement. The terms and obligations of the parties under the Ordinance and Application are incorporated into this Agreement by reference.

4. Security Provided to the City of Lovington: The City of Lovington will require a [X – describe type of security – ie, Special Warranty Deed to be placed in Escrow (such escrow funded by the Project Party) transferring the property and all development to the COMMUNITY]. Should the Project Party cease operation during the term of this agreement clawback provisions are $100,000. Any funds recovered by the City pursuant to said promissory note and security agreement shall be returned to EDD

within thirty (30) days after they are received by the City, and any property acquired or developed by the City as a result of this Project, shall be used by the City for future economic development purposes only.

5. Review: City of Lovington will review project timeline, progress and job creation annually until two year anniversary of this agreement. Job creation reporting will be supported by reports and documentation from the New Mexico Department of Workforce Solutions demonstrating the headcount of the operation to demonstrate compliance with this Agreement at each review cycle annually, and another at thirty (30) days prior to the anniversary date of this Agreement, for a period of two years.

6. Ratification: The City of Lovington and Lovington Warehouse hereby ratify all actions consistent with this Agreement the Project Party or their respective agents may have taken in furtherance of the Project.

7. Miscellaneous: This Agreement binds and insures to the benefit of the loading and unloading grading and paving upgrade for Lovington Warehouse and their respective successors and assigns. This Agreement may be amended or modified, and the performance by any party of its obligations hereunder may be waived, only in a written instrument duly executed by the parties. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument. This Agreement is governed by and is to be construed in accordance with the laws of the State of New Mexico, without giving effect to its choice-of-law principles.

8. Term of Participation Agreement: Will be agreed upon through the City of Lovington and Lovington Warehouse by the 30th of November until the second year anniversary.

Adopted by the City of Lovington

On the [day] of [month], [year]

_____
Its Mayor

_____
Attest: City Clerk

_____
Lovington Warehouse – Mark Saxton

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☐ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☑ **OTHER ACTION**

SUBJECT: Inflatable Structure Use Policy
DEPARTMENT: Executive
SUBMITTED BY: James R. Williams, City Manager
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

Staff have prepared the Inflatable Structure Use Policy at our municipal park and are requesting final approval by Commission. If approved tonight, this policy will go into effect immediately.

FISCAL IMPACT: *REVIEWED BY:* _____
(Finance Director)

ATTACHMENTS:

Inflatable Structure Use Policy

RECOMMENDATION:

Motion to approve as submitted.

_____ **Department Head**

_____ **City Manager**

City of Lovington
Policy Regarding Inflatable Structures in City Parks

I. Purpose

The City of Lovington has developed the following inflatable structure policy for the purpose of minimizing damage to park turf and irrigation systems from inflatable set-ups and maximizing the safety and enjoyment for park users.

II. Definition

Inflatable structures are used for the sole intent of recreational purposes to include, but not limited to:

- Bounce houses
- Castles
- Slides
- Water slides
- Jumpers
- Any similar structure

III. Users

A. It is the responsibility of the party hiring the inflatable structure company to obtain a written permit from the City of Lovington and to inform the selected company of the exact site location, date, and time for set-up of the inflatable structure.
B. Only vendors approved by the City of Lovington may be utilized. Use of personal jumpers is prohibited.
C. Permit applications for use of an inflatable structure must be submitted two weeks in advance of the event; however, the submission of an application does not guarantee availability. The adjacent shelter or amphitheater must also be reserved.
D. Permit applications shall be accompanied by a one-hundred dollar ($100) refundable deposit. The Parks Department will inspect the site after the event for damage to the turf, facilities, and proper disposal of refuse. Deposits will only be refunded if the site is returned in good condition.
E. Permits must be posted in a visible location (i.e. on the inflatable structure) for the duration of the event. The vendor listed on the permit must be used.
F. Commercial use is prohibited. Permit holders shall not charge a fee to use the inflatable structure.
G. Individuals and their immediate family members will be limited to one inflatable structure permit per thirty (30) day period.

IV. Vendors

All vendors must be approved by the City of Lovington. To receive approval the vendor must have a current City of Lovington business license and submit proof insurance with minimum liability coverage of one million dollars ($1,000,000), with the City of Lovington included as an additional insured. The list of approved vendors will be available on the City website or upon request at City Hall.

V. Allowed Sites

Inflatable structures are only permitted at Chaparral Park. Approved sites include the space to the immediate south of the main shelter and the north side of the amphitheater. Only one inflatable structure is allowed per site.

VI. Inflatable Structure Setup

A. Vendors are to adhere to manufacturer guidelines in regards to anchoring the inflatable structure. If stakes are used, the Applicant is responsible for any damage to turf, irrigation system components, or improved surfaces.
B. Placement of inflatable structures is limited to the site listed on the approved application.
C. Inflatable structures may not be set up the night prior to an event or left overnight in a park.

VII. Damages

The applicant is responsible for any damage to park property incurred due to inflatable structure use, including damage to the turf, irrigation system, improved surfaces, or electrical connections and wiring. Liability for damages is not limited to the one-hundred dollar ($100) refundable deposit.

VIII. Park Rules and Regulation

The applicant shall be responsible for adhering to all park rules and regulations as posted at the park and outlined on the City website.

City of Lovington
Inflatable Structure Permit

Applicant Name: _____ _____
First Last

Address: _____

_____

Phone (day): _____
Phone (alt): _____

Date of Event:		**Begin Time:**		**End Time:**	
Site Requested:	☐	**Main Shelter**	☐	**Amphitheater**	
Inflatable Structure Vendor:					
Vendor Phone Number:					

Vendor must be selected from the City of Lovington Approved Inflatable Structure Vendor List. These companies have proof of current insurance on file with the City meeting the following requirements. 1) Minimum liability coverage in the amount of $1,000,000 per occurrence, and 2) the City of Lovington named as an additional insured, and 3) possess a current City of Lovington business license. The certificate of insurance must be valid on the day of the inflatable structure use.

SAVE HARMLESS AND INDEMNIFICATION AGREEMENT

I, _____(Applicant), hereby agree to protect, defend, indemnify and hold harmless the City of Lovington, its officers, employees and agents against any action, demand, claim, loss, injury or liability arising out of or resulting in any way from the installation, use or removal of the inflatable structure on City property, or from any actions taken, work performed or service provided by Applicant with respect to the use of City property for the purposes described herein. Applicants obligations to indemnify and hold harmless are joint and several, and exclude only such action, demand, claim, loss or liability due to the sole negligence or willful misconduct of City and/or its employees. All of Applicants obligations under this agreement are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of this Permit. In any action or claim against the City in which Applicant is defending City, City shall have the right to approve legal counsel providing City's defense.

Applicants Name: _____

Applicants Signature: _____ Date: _____

_____ (Initial) I understand that by signing this permit I have agreed to comply with park rules and regulations and to be responsible for proper oversight of the installation and use of the inflatable structure as outlined in the City of Lovington Policy Regarding Inflatable Structures in City Parks.

_____ (Initial) I understand that there is only one inflatable structure allowed per approved site.

City of Lovington Use Only

This Inflatable Structure permit is issued under the authority of the City Manager specified in the City of Lovington Policy regarding Inflatable Structures in City Parks. If an authorized signatory of the City has signed below, this permit is in effect as of the date set forth above under the heading "Event Date." Applicant shall post permit in a visible location (i.e. on equipment) during event.

_____ _____ _____
Signature **Title** **Date**

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☐ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☑ **OTHER ACTION**

SUBJECT: Approval to Advertise Ordinance 517 - Park and Rec Rules
DEPARTMENT: Executive
SUBMITTED BY: James R. Williams, City Manager
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

Staff are requesting approval to advertise Ordinance 517 - Park and Recreation Rules and Regulations. At the request of Commission, staff have included fines for violation of any part of this chapter. The fine for violation is a maximum of $300 or ninety day, or a combination of the two.

FISCAL IMPACT: *REVIEWED BY:* _____ *(Finance Director)*

Advertisement costs.

ATTACHMENTS:

Ordinance 517 - Park and Recreation Rules and Regulations

RECOMMENDATION:

Motion to approve advertisement of Ordinance 517.

If approval is given, it will be advertised as required by law. Given publication requirements, final approval will not take place until the November 25, 2013 Commission Meeting.

_____ **Department Head**

_____ **City Manager**

ORDINANCE NO. 517

An ordinance of the City of Lovington, New Mexico, amending Title 12, Chapter 12.28 – Public Park Regulations.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 12, CHAPTER 12.28 BE AND HEREBY IS AMENDED AS FOLLOWS:

The title of this Chapter is amended to Public Park and Recreation Facility Regulations

12.28.010 Remaining in public parks overnight prohibited – Exceptions.

It is unlawful for any person to remain in, occupy, or use any public park in the municipality between the hours of 11 p.m. and 4 a.m., unless present in the furtherance or enforcement of this chapter or irrigation or maintenance of park lands and, or unless authorized by other provisions of this chapter.

12.28.015 General Rules – Parks facilities

A. No peddling, soliciting or commercial enterprise is permitted in a municipal park except by approval of the City.
B. Disorderly conduct, abusive language, noisy disturbances or disregard of these rules and regulations will be grounds for immediate removal of person(s) from the municipal park by the Lovington Police Department or as authorized by the City Manager.
C. Park users are responsible for the conduct of and any damage to the park or its equipment caused by their legal dependents or other minors in their care at the time.
D. Children under eight (8) years of age shall not be left unattended in any park.
E. No person shall consume or have in their possession any intoxicating beverage or other drug or narcotic prohibited by federal law.
F. Air rifles, BB guns, firearms, bows and arrows, rockets, slingshots, fireworks, or other guns and dangerous objects such as golf equipment may not be possessed or used while in a municipal park.
G. Wading or swimming in fountains or ponds is prohibited.
H. Motor vehicles shall be operated and parked only in designated areas that are specifically designed for motor vehicles or for parking.
I. Speed limits in municipal parks is ten miles per hour and must be observed at all times.
J. Bicycles, roller skates, skateboards and other types of non-motorized vehicles must be used safely, and in compliance with all posted rules.

K. No person shall ride or lead any horse or pony in any park without approval by the City.
L. No animals are permitted in municipal parks unless they are on a leash, except in designated off-leash areas, and shall be kept under supervision at all times; and, are not allowed to run at large or to commit any nuisance.
M. All animal waste shall be picked up immediately by the owner and placed in an appropriate waste disposal container.
N. Littering is strictly prohibited. No person shall bring non-park generated trash into the park for the purpose of discarding of such.
O. Fires are permitted only in grills. No other open fires are permitted on municipal properties without the permission of the City.
P. Inflatable structures are permitted only in designated areas and by permit issued by the City.
Q. It is unlawful to deface, destroy, or cause harm or damage to equipment, furniture, structures, trees, shrubbery, turf, signs, or wildlife.
R. The city, its representatives and its employees are not responsible for accidents, injuries, or loss of property by fire, theft, wind, flood or other natural acts which are beyond their control. All equipment furnished within municipal parks is solely for the convenience of the user and is utilized at the risk of the user.
S. Public events require a permit issued by the City. A permit application and a one-hundred dollar ($100) deposit is required at least two weeks in advance. The Parks Department will inspect the site after the event for damage to the turf, facilities, equipment, and proper disposal of refuse. Deposits will refunded if the site is returned in good condition.
T. Shelter reservations require two weeks advance notice. The pavilion and amphitheater located at Chaparral Park are the only shelters that may be reserved.

12.28.016 General Rules – Chaparral Lake

A. State fishing license is required.
B. Trout validation stamp is required November 1 through March 31.
C. Unauthorized fish are not allowed to be placed in lake.
D. Passenger watercrafts are prohibited.
E. Wading or swimming in lake is prohibited.
F. No trout or throw lines.

12.28.017 General Rules – Aquatic Facility

A. Animals other than seeing eye dogs or assistance animals, are not allowed in the aquatic facility.
B. Any person having an infection or communicable disease is prohibited from using the aquatic facility.
C. All children under the age of eight years of age must be accompanied by a parent or responsible adult supervisor.
D. Persons having open blisters, cuts, etc. are advised to not use the pool.
E. Running, pushing, boisterous or rough play, or excessive noise is prohibited in the pool area, shower, or dressing rooms.
F. Spitting, spouting water, blowing nose, or discharging wastes in the pool is strictly prohibited.
G. No glass containers or objects are allowed in or around the pool area.
H. No gum or tobacco products are allowed in the aquatic facility.
I. All infants are required to wear swim diapers.
J. Appropriate swim attire must be worn if swimming or entering the pool.
K. All individuals entering the pool must pay for entrance.

12.28.018 General Rules – Ballparks, athletic fields, recreation facilities

A. No peddling, soliciting or commercial enterprise is permitted in a municipal ballpark, athletic field, or recreation facility except by approval of the City.
B. Disorderly conduct, abusive language, noisy disturbances or disregard of these rules and regulations will be grounds for immediate removal of person(s) from the municipal ballpark, athletic field, or recreation facility by the Lovington Police Department or as authorized by the City Manager.
C. Ballpark, athletic field, or recreation facility users are responsible for the conduct of and any damage to the park or its equipment caused by their legal dependents or other minors in their care at the time.
D. Children under eight (8) years of age shall not be left unattended in any ballpark, athletic field, or recreation facility.
E. No person shall consume or have in their possession any intoxicating beverage or other drug or narcotic prohibited by federal law.
F. Air rifles, BB guns, firearms, bows and arrows, rockets, slingshots, fireworks, or other guns and dangerous objects such as golf equipment may not be possessed or used while in a municipal ballpark, athletic field, or recreation facility.
G. Littering is strictly prohibited. No person shall bring non-site generated trash into a municipal ballpark, athletic field, or recreation facility for the purpose of discarding of such.

H. It is unlawful to deface, destroy, or cause harm or damage to equipment, furniture, structures, trees, shrubbery, turf, signs, or wildlife.
I. The city, its representatives and its employees are not responsible for accidents, injuries, or loss of property by fire, theft, wind, flood or other natural acts which are beyond their control. All equipment furnished within municipal ballparks, athletic fields, or recreation facilities is solely for the convenience of the user and is utilized at the risk of the user.

12.28.070 Violation – Penalty.

Anyone found guilty of violating the provisions of this chapter shall be punished by a fine of up to three hundred dollars or imprisonment of up to ninety days, or by both such fine and imprisonment.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON THE _____ DAY of _____, 2013.

_____
DIXIE DRUMMOND, Mayor

ATTEST:

_____
CAROL ANN HOGUE, City Clerk

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☐ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☑ **OTHER ACTION**

SUBJECT: Approval to Advertise Ordinance 518 - UTO Changes
DEPARTMENT: Police
SUBMITTED BY: Danny Bryant, Police Chief
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

This Ordinance has been prepared in order to amend the Uniform Traffic Ordinance. The amendments create changes to

- Section 12-6-12.6 (Unlawful Use of License; Driving Privilege to do so has been Suspended or Revoked)
- Section 12-12-3 (Conduct of Officer - Notices by Citation)
- Section 12-12-3.1 (Electronic Uniform Traffic Citation)
- Section 12-12-11 (Abstract of Traffic Cases - Report on Convictions)

FISCAL IMPACT: *REVIEWED BY:* _____ *(Finance Director)*

Advertisement costs.

ATTACHMENTS:

Ordinance 518
New pages to be included in ordinance

RECOMMENDATION:

Motion to approve advertisement.

Department Head **City Manager**

ORDINANCE NO. 518

An ordinance of the City of Lovington, New Mexico, amending Title 10, Chapter 10.04 – Uniform Traffic Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 10, CHAPTER 10.04 BE AND HEREBY IS AMENDED AS FOLLOWS:

10.04.010 Adoption

The 2010 compilation of the New Mexico Uniform Traffic Ordinance, comprising of section 12-1-1 through 12-13-6 inclusive, and all changes through July 1, 2013, are herewith adopted by reference, pursuant to Section 3-17-6 N.M.S.A, 1978.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON THE _____ DAY of _____, 2013.

_____
DIXIE DRUMMOND, Mayor

ATTEST:

_____
CAROL ANN HOGUE, City Clerk

New Mexico
Uniform Traffic Ordinance
2010 Compilation

THIS DOCUMENT CONTAINS ALL REVISIONS THROUGH JULY, 2013

New Mexico Municipal League
P.O. Box 846
Santa Fe, New Mexico 87504
(505) 982-5573 or 1-800-432-2036
www.nmml.org

PREFACE TO 2010 COMPILATION

NEW MEXICO UNIFORM TRAFFIC ORDINANCE

This Uniform Traffic Ordinance consists of the 2010 Compilation, which replaces the 2004 Compilation, and amendments through July, 2013. The citations in parentheses are to the 1978 New Mexico Statutes Annotated (or as amended since 1979). These citations at the end of a paragraph indicate comparable provisions in the State law. The exact language in the State Motor Vehicle Code has been used in the Ordinance wherever possible. An asterisk (*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

The 2010 Compilation has a new page numbering system. Each Article is numbered individually with the Article number first. Consequently, the previous Compilation will not necessarily match the 2010 Compilation's page numbers. The 2010 Compilation contains all amendments since July, 2004 enacted by the Legislature through July, 2013 with the 2013 changes.

2013 Uniform Traffic Ordinance (UTO) Changes

[——] = deleted
Underline = new material

12-6-12.6 UNLAWFUL USE OF LICENSE; DRIVING WHEN PRIVILEGE TO DO SO HAS BEEN SUSPENDED OR REVOKED.

No person shall:

A.

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;

(2) lend his driver's license or permit to any other person or knowingly permit the use thereof by another;

(3) display or represent as one's own any driver's license or permit not issued to him;

(4) fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked or canceled;

(5) permit any unlawful use of driver's license or permit issued to him; (66-5-37 NMSA 1978)

(6) drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended [~~or revoked~~] and who knows or should have known that his license was suspended [~~or revoked~~]. Upon conviction, the person shall be punished by imprisonment for not less than four days nor more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than five hundred dollars ($500.00). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. (66-5-39 NMSA 1978) ; [~~Notwithstanding any other provision of law for suspension or deferment of execution of sentence, if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction under this section, that person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300.00) or not more than five hundred dollars ($500.00) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act~~].

(7) drive a motor vehicle on a highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Sec. 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than ninety days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than $500. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court; and

(8) notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300) and not more than five hundred dollars ($500) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. (66-5-39.1 NMSA 1978)

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle. (66-5-39.1 NMSA 1978)

12-12-3 CONDUCT OF ARRESTING OFFICER--NOTICES BY CITATION.

Amended 2013

A. Except as provided in Section 12-12-5, unless a penalty assessment or warning notice is given, whenever a person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release him from custody.

B. Whenever a person is arrested for violation of a penalty assessment misdemeanor and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation in paper or electronic form, shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the municipal court with jurisdiction and release him from

custody. No officer shall accept custody or payment of any penalty assessment. If the arrested person declines to accept a penalty assessment notice, the officer shall issue a notice to appear. (66-8-123 B NMSA 1978)

C. The arresting officer may issue a warning notice, but shall fill in the information section of the uniform traffic citation in paper or electronic form and give a copy to the arrested person after requiring his signature on the warning notice as an acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.

D. In order to secure his release, the arrested person must give his written promise to appear in court, or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

E. Any officer violating this section is guilty of misconduct in office and is subject to removal. (66-8-123 NMSA 1978)

F. An electronic traffic citation, prescribed by Sec 12-12-3.1, is an electronic version of the uniform traffic citation. For the purposes of this section, an electronic citation may be completed instead of a uniform traffic citation; provided, however, that where this section requires a copy of a citation to be given to an arrested person, a physical copy of the citation shall be provided whether a uniform traffic citation or an electronic form of the uniform traffic citation was used. An electronic form of the uniform traffic citation may be signed electronically.

12-12-3.1 ELECTRONIC UNIFORM TRAFFIC CITATION

A. An electronic version of a uniform traffic citation shall include the same information required to be included in a uniform traffic citation. An electronic version of a uniform traffic citation may be signed electronically and a law enforcement officer may submit or file with a court an electronic version of a uniform traffic citation if prior permission of the department has been secured. Where the law requires a law enforcement officer to provide a copy of a citation to a person cited or arrested, a physical copy of the citation shall be provided regardless of whether a paper uniform traffic citation or an electronic version of a uniform traffic citation was used. (66-8-128 NMSA 1978)

12-12-11 ABSTRACT OF TRAFFIC CASES--REPORT ON CONVICTIONS.

A. Every municipal judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court. The court shall notify the Department if a defendant fails to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles.

B. Within ten days of the later of entry of [~~judgment and sentence or failure to appear on a charge of violating~~] a final disposition on a conviction for violation of this

ordinance or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every municipal judge, including children's court judges, or the clerk of the court in which the entry of [~~judgment and sentence or failure to appear~~] the final disposition occurred shall prepare and forward to the department an abstract of the record containing the name and address of the defendant; the specific section number and common name of the provision of the local law, ordinance or regulation under which the defendant was tried; the plea, finding of the court and disposition of the charge, including fine or jail sentence or both [~~forfeiture of bail or dismissal of the charge~~] ; total costs assessed to the defendant; the date of the hearing; the court's name and address; whether defendant was a first or subsequent offender; and whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required in Subsection B of this Section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required in Subsection B of this Section in the manner prescribed by the director. A copy of each penalty assessment processed shall be forwarded to the division within ten (10) days of completion of local processing for posting to the driver's record. With the prior approval of the director, the required information may be submitted to the division by electronic means in lieu of forwarding copies of the penalty assessments.

E. The willful failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal. (66-8-135 NMSA 1978)

ARTICLE XII

PENALTIES AND PROCEDURES ON ARREST

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12-12-1 PENALTIES.

12-12-1.1 MAXIMUM PENALTY. Unless another penalty is expressly provided in this ordinance or as otherwise provided by state law, every person convicted of a violation of any provision of this ordinance shall be punished by a fine of not more than three hundred dollars ($300.00) or by imprisonment for not more than 90 days or by both such fine and imprisonment. (*)

12-12-1.2 PENALTY ASSESSMENT PROGRAM. Any municipality may, by passage of an ordinance, establish a municipal penalty assessment program similar to that established in Section 66-8-116 NMSA 1978 for violations of provisions of the Motor Vehicle Code. Such a municipal program shall be limited to violations of municipal traffic ordinances. All penalty assessments shall be processed by the municipal court and all fines and fees collected shall be deposited in the treasury of the municipality. (66-8-130 NMSA 1978)

12-12-1.3 MANDATORY FEES UPON CONVICTION *Amended 7-09*

A. There is imposed upon any person convicted of violating any municipal ordinance the penalty for which carries a potential jail term or any ordinance relating to the operation of a motor vehicle the following mandatory fees:

(1) a corrections fee of twenty dollars ($20.00);

(2) a judicial education fee of three dollars ($3.00); and

(3) a court automation fee of six dollars ($6.00).

B. As used in this ordinance, "convicted" means the defendant has been found guilty of a criminal charge by the municipal judge, either after trial, a plea of guilty or a plea of nolo contendere, or has elected to pay a penalty assessment in lieu of trial.

C. All corrections fees collected shall be deposited in a special corrections fund in the municipal treasury and shall be used only for:

1. municipal jailer training;
2. construction planning, construction, operation and maintenance of the municipal jail;
3. paying the costs of housing the municipality's prisoners in a county jail or detention facility or housing juveniles in a detention facility;
4. complying with federal match or contribution requirements relating to jails or juvenile detention facilities;
5. providing in-patient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;
6. defraying the cost of transporting prisoners to jails or juvenile detention facilities; or
7. providing electronic monitoring systems.

D. A municipality may credit the interest collected from fees deposited in the special corrections fund to the municipality's general fund.

E. All judicial education fees collected shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of benchbooks and other written materials, of municipal judges and other municipal court personnel.

F. All court automation fees collected shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation system shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information system council. (35-14-11 NMSA 1978)

12-12-2 FORMS AND RECORDS OF TRAFFIC CITATIONS AND ARRESTS.

A. The municipality shall provide books to include uniform traffic citation forms authorized by state law for notifying alleged violators to appear and answer to charges of violating traffic ordinances in the municipal court.

B. The municipality shall issue uniform traffic citation books to the chief of police or his authorized agent and shall maintain a record of every book issued and shall require a written receipt for every book.

C. The chief of police shall keep a record and require a receipt for each serially numbered citation issued to individual officers. (*)

12-12-3 CONDUCT OF ARRESTING OFFICER--NOTICES BY CITATION.

Amended 2013

A. Except as provided in Section 12-12-5, unless a penalty assessment or warning notice is given, whenever a person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, the arresting officer, using the uniform traffic citation in paper or electronic form , shall complete the information section and prepare a notice to appear in court, specifying the time and place to appear, have the arrested person sign the agreement to appear as specified, give a copy of the citation to the arrested person and release him from custody.

B. Whenever a person is arrested for violation of a penalty assessment misdemeanor and elects to pay the penalty assessment, the arresting officer, using the uniform traffic citation in paper or electronic form , shall complete the information section and prepare the penalty assessment notice indicating the amount of the penalty assessment, have the arrested person sign the agreement to pay the amount prescribed, give a copy of the citation along with a business reply envelope addressed to the municipal court with jurisdiction and release him from custody. No officer shall accept custody or payment of any penalty assessment. If the arrested person declines to accept a penalty assessment notice, the officer shall issue a notice to appear. (66-8-123 B NMSA 1978)

C. The arresting officer may issue a warning notice, but shall fill in the information section of the uniform traffic citation in paper or electronic form and give a copy to the arrested person after requiring his signature on the warning notice as an acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of suspension or revocation of license under Section 66-5-30 NMSA 1978.

D. In order to secure his release, the arrested person must give his written promise to appear in court, or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

E. Any officer violating this section is guilty of misconduct in office and is subject to removal. (66-8-123 NMSA 1978)

F. An electronic traffic citation, prescribed by Sec 12-12-3.1, is an electronic version of the uniform traffic citation. For the purposes of this section, an electronic citation may be completed instead of a uniform traffic citation; provided, however, that where this section requires a copy of a citation to be given to an arrested person, a physical copy of the citation shall be provided whether a uniform traffic citation or an electronic form of the uniform traffic citation was used. An electronic form of the uniform traffic citation may be signed electronically.

12-12-3.1 ELECTRONIC UNIFORM TRAFFIC CITATION

A. An electronic version of a uniform traffic citation shall include the same information required to be included in a uniform traffic citation. An electronic version of a uniform traffic citation may be signed electronically and a law enforcement officer may submit or file with a court an electronic version of a uniform traffic citation if prior permission of the department has been secured. Where the law requires a law enforcement officer to provide a copy of a citation to a person cited or arrested, a physical copy of the citation shall be provided regardless of whether a paper uniform traffic citation or an electronic version of a uniform traffic citation was used. (66-8-128 NMSA 1978)

12-12-4 UNIFORM TRAFFIC CITATION IS COMPLAINT. The uniform traffic citation used as a notice to appear is a valid complaint, though not verified. (66-8-131 NMSA 1978)

12-12-5 ARREST WITHOUT WARRANT.

A. Members of the municipal police force may arrest without warrant any person:

(1) present at the scene of a motor vehicle accident;

(2) on a street when charged with theft of a motor vehicle;

(3) charged with crime in another jurisdiction, upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement he is likely to flee the jurisdiction of the state; (66-8-125 NMSA 1978)

(4) charged with driving while under the influence of intoxicating liquor or drugs;

(5) charged with failure to stop in the event of an accident causing death, personal injuries or damage to property;

(6) charged with reckless driving;

(7) the arresting officer has good cause to believe has committed a felony;

(8) who refuses to give his written promise to appear in court or acknowledge receipt of a warning notice; (1961-62 Op. Atty. Gen. No. 61-117) or

(9) who is charged with driving when his privilege to do so was suspended or revoked pursuant to Section 66-8-111 NMSA 1978 or pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs. (66-8-122 NMSA 1978)

B. To arrest without warrant, the arresting officer must have reasonable grounds, based on personal investigation which may include information from eyewitnesses, to believe the person arrested has committed a crime.

C. Members of the municipal police force may not make arrests for traffic violations if not in uniform; however, nothing in this section shall be construed to prohibit the arrest, without warrant, by a peace officer of any person when probable cause exists to believe that a felony crime has been committed or in non-traffic cases. (66-8-125 NMSA 1978)

D. This section governs all police officers in making arrests without warrant for violations of the New Mexico Motor Vehicle Code, this ordinance and other laws relating to motor vehicles but the procedure prescribed is not exclusive of any other method prescribed by law for the arrest and prosecution of a person violating these laws. (66-8-127 NMSA 1978)

12-12-6 IMMEDIATE APPEARANCE BEFORE MUNICIPAL OR MAGISTRATE JUDGE. Whenever any person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, he shall be immediately taken before an available municipal or magistrate judge who has jurisdiction of the offense when the:

(1) person requests immediate appearance;

(2) person is charged with driving while under the influence of intoxicating liquor or narcotic drugs;

(3) person is charged with failure to stop in the event of an accident causing death, personal injuries or damage to property;

(4) person is charged with reckless driving;

(5) arresting officer has good cause to believe the person arrested has committed a felony;

(6) person refuses to give his written promise to appear in court or acknowledge receipt of a warning notice; or

(7) person is charged with driving when his privilege to do so was suspended or revoked pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs. (66-8-122 NMSA 1978)

12-12-7 FAILURE TO OBEY NOTICE TO APPEAR.

A. It is a misdemeanor for any person to violate his written promise to appear in court, given to an officer upon issuance of a uniform traffic citation, regardless of the disposition of the charge for which the citation was issued.

B. A written promise to appear in court may be complied with by appearance of counsel. (66-8-126 NMSA 1978)

12-12-8 ARRESTING OFFICER TO BE IN UNIFORM.
Amended July, 2007

A. No person shall be arrested for violating this ordinance or other law relating to motor vehicles punishable as a misdemeanor except by a commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating the peace officer's official status. (66-8-124 NMSA 1978)

B. Notwithstanding the provisions of Subsection A of this section, a municipality may provide by ordinance that uniformed private security guards may be commissioned by the local police agency to issue parking citations for violations of clearly and properly marked fire zones and access zones for persons with significant mobility limitation. Prior to the commissioning of any security guard, the employer of the security guard shall agree in writing with the local police agency to the commissioning of the employer's security guard. The employer of any security guard commissioned under the provisions of this section shall be liable for the actions of that security guard in carrying out the security guard's duties pursuant to that commission. Notwithstanding the provisions of the Tort Claim Act, private security guards commissioned under this section shall not be deemed public employees under that act. (66-8-124 NMSA 1978)

12-12-9 HANDLING OF CITATIONS

A. Any entity that wishes to submit uniform traffic citations required to be submitted to the department by electronic means must secure the prior permission of the department. (66-8-128 D NMSA 1978)

B. Every police officer issuing a uniform traffic citation to an alleged violator of this ordinance or other law relating to motor vehicles shall dispose of the citations as indicated on the back of each copy. (66-8-133 NMSA 1978)

C. Citations spoiled or issued in error shall be marked "void" in large letters on the face, signed by the officer, and the copies disposed of as a valid warning notice. (66-8-133 NMSA 1978)

D. Upon filing of the uniform traffic citation in the municipal court, the citation may be disposed of only by trial in the court or by other official action by a judge of the court including, at the discretion of the municipal judge, forfeiture of bail or

by payment of a fine to the traffic violations bureau of the court. (*)

E. The chief of police shall maintain or cause to be maintained a record of serially numbered warrants issued by the municipal court on traffic violation charges which are delivered to the police department for service and of the final disposition of all such warrants. (*)

F. The chief of police shall issue, keep a record and require a receipt for each serially numbered citation issued to individual police officers. (66-8-132 NMSA 1978)

G. It is a misdemeanor and official misconduct for any officer or other public official or employee to dispose of a uniform traffic citation except as provided in this section. (66-8-133 NMSA 1978)

12-12-10 ILLEGAL CANCELLATION--AUDIT OF CITATION RECORDS.

A. Any person who cancels or solicits the cancellation of any uniform traffic citation other than as provided in this ordinance is guilty of a misdemeanor.

B. Every record of uniform traffic citations required in this ordinance shall be audited monthly by the appropriate fiscal officer of this municipality.

C. The fiscal officer shall publish an annual summary of all traffic violation notices issued by the traffic-enforcement agency. (66-8-134 NMSA 1978)

12-12-11 ABSTRACT OF TRAFFIC CASES--REPORT ON CONVICTIONS.

A. Every municipal judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court. The court shall notify the Department if a defendant fails to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles.

B. Within ten days of the later of entry of a final disposition on a conviction for violation of this ordinance or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every municipal judge, including children's court judges, or the clerk of the court in which the entry of the final disposition occurred shall prepare and forward to the department an abstract of the record containing the name and address of the defendant; the specific section number and common name of the provision of the local law, ordinance or regulation under which the defendant was tried; the plea, finding of the court and disposition of the charge, including fine or jail sentence or bot ; total costs assessed to the defendant; the date of the hearing; the court's name and address; whether defendant was a first or subsequent offender; and whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required in Subsection B of this Section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required in Subsection B of this Section in the manner prescribed by the director. A copy of each penalty assessment processed shall be forwarded to the division within ten (10) days of completion of local processing for posting to the driver's record. With the prior approval of the director, the required information may be submitted to the division by electronic means in lieu of forwarding copies of the penalty assessments.

E. The willful failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal. (66-8-135 NMSA 1978)

12-12-12 CITATION ON ILLEGALLY PARKED VEHICLE. Whenever any motor vehicle without driver is found parked, standing or stopped in violation of any of the restrictions imposed by this ordinance, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user and shall conspicuously affix to the vehicle a traffic citation on a form provided by the municipality for the driver to answer to the charge against him within five days during the hours and at a place specified in the citation. (*)

12-12-13 FAILURE TO COMPLY WITH TRAFFIC CITATION ATTACHED TO PARKED VEHICLE. If a violator of the restrictions on stopping, standing or parking under the traffic laws or ordinances does not appear in response to a traffic citation affixed to the motor vehicle within a period of five days, the traffic violations bureau or clerk of the municipal court shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing him of the violation and warning him that in the event the letter is disregarded for a period of five days a warrant of arrest will be issued. (*)

12-12-14 PRESUMPTION IN REFERENCE TO ILLEGAL PARKING.

A. In any prosecution charging a violation of any ordinance governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of the ordinance, together with proof that the defendant named in the complaint was at the time of the parking the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, for the time during which, the violation occurred.

B. The foregoing stated presumption shall apply only when the procedure as prescribed in Sections 12-12-12 and 12-12-13 has been followed. (*)

12-12-15 WHEN WARRANT TO BE ISSUED. In the event any person fails to comply with a traffic citation given to the person or attached to a vehicle or fails to make

appearance pursuant to a summons directing an appearance in the municipal court or the traffic violations bureau, or if any person fails or refuses to deposit bail as required and within the time permitted by ordinance, the municipal judge shall issue either a summons or a warrant for his arrest. (*)

12-12-16 DISPOSITION OF TRAFFIC FINES AND FORFEITURES. All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this ordinance shall be paid into the municipal treasury. (*)

12-12-17 OFFICIAL MISCONDUCT. Failure, refusal or neglect on the part of any judicial or other officer or employee receiving or having custody of any fine or forfeiture, either before or after a deposit in the municipal treasury, shall constitute misconduct in office and shall be grounds for removal. (*)

12-12-18 AUTHORITY TO REMOVE OR RELOCATE VEHICLES.

A. Definitions
For purposes of this section:

(1) "Chief" shall mean the Chief of Police of the municipal police department or his designated representative.

(2) "Impound" shall mean the towing and storage of a motor vehicle as authorized in this section.

(3) "Owner" of a vehicle shall mean the registered owner or owners of a vehicle as recorded with the New Mexico department of motor vehicles or similar agency of a state outside New Mexico. Where written notice to the owner is required by this section, such notice shall be given to each registered owner. Where appearance of the owner is required by this section, appearance may be by a person authorized by the owner to appear on his behalf.

(4) "Sign" shall mean a printed notification to the public giving notice of the possibility of removal of a vehicle by stating that the area is a tow-away zone, or that the violation of the restrictions stated on the sign may result in towing, and the sign must be readily visible from the point of removal.

(5) "Written Notice" shall mean notice sent by certified mail, return receipt requested, to the last known address of the owner:

a) When such notice is required under the terms of this section, weekends and holidays shall not be included when calculating the time for mailing notice.

b) When a vehicle is registered in a state outside New Mexico, the Chief shall make all reasonable and diligent efforts to ascertain the name and address of all registered owners. If the name and address information for an in-state or out-of-state registered vehicle is not available soon enough to meet the time deadlines for mailing written notice, then the notice shall be mailed as soon as possible after the

information is received.

c) As a valid substitute for "written notice" as defined herein, notice may be given by personal service or in any other reasonable manner, so long as actual notice is given to at least one owner within the time limits provided. Notice may be effected by verbal notice to an owner, or to the driver or passenger of a vehicle, if the driver or passenger reasonably appears to have custody of the vehicle with the owner's knowledge and permission. Verbal notice to the owner, driver or passenger shall be valid, however, only if the person so notified is given all the information required in the written notice and the person is given in writing a phone number where the owner, driver or passenger can obtain further information from a municipal employee.

d) If notice cannot be given per the other provisions of this paragraph, notice shall be given by publication once in a newspaper of general circulation in the community as soon as practicable after reasonable and diligent efforts to give notice as provided elsewhere in this paragraph prove fruitless. (*)

B. Prohibition of Removal and Relocation.

It is unlawful for a municipal officer, or any municipal employee, to remove or relocate, or cause to be removed or relocated, any unattended vehicle from any street, alley or public way within the municipal corporate limits, except as provided in this section. (*)

C. Impoundment of Vehicles Generally.

(1) Any vehicle impounded pursuant to this section shall be towed in accordance with state and local law to an authorized private storage facility or an area designated or maintained by the police department or by the municipality. The person authorizing impoundment shall issue signed and dated instructions in writing to the storage facility specifically stating whether the vehicle is to be held for investigation or as evidence, or whether it may be released to the owner after all attendant charges have been satisfied pursuant to Subsection H of this section. If the vehicle has been in storage for over 30 days after written notice is given and no hearing has been requested or the vehicle has not been claimed per the provisions of this section, then the storage facility operator may sell the vehicle per the provisions of applicable state law.

(2) If any vehicle is about to be removed, relocated or is in the process of being removed or relocated and the owner thereof or his agent appears and claims the vehicle and agrees forthwith to remove it or relocate it, such vehicle shall be delivered to such owner or agent upon demand therefore and upon furnishing satisfactory evidence of identity and ownership or agency. If any such owner or agent shall fail, refuse or neglect to forthwith remove such vehicle, such vehicle shall nevertheless be impounded or relocated. Removal by such owner or agent shall not relieve the offender of liability for any towing costs already incurred or for any fine or penalty for the violation of any law or ordinance for which the vehicle was to be removed or relocated. (*)

D. Circumstances Permitting Summary Vehicle Impoundment or

Relocation.

(1) Any municipal police officer, or any municipal employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws, may order the impoundment of any vehicle within the municipal corporate limits, without prior notice to the owner or operator thereof, under the following circumstances:

a) when any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction or hazard to traffic; (66-7-350 NMSA 1978)

b) when any vehicle is parked or left standing upon a street, alley, or public way in such a position as to obstruct the normal movement of traffic or in such a condition as to create a hazard to other traffic;

c) when any vehicle is found upon a street, alley, public way or private property, and an offense report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been stolen, and the owner is not available to, or cannot, immediately provide for its custody or removal; (*)

d) when any vehicle is parked so as to block the entrance to a public or private driveway; (66-7-351 NMSA 1978)

e) when any vehicle is parked within fifteen (15) feet of a fire hydrant, is illegally parked so as to prevent access by firefighting equipment to a fire hydrant, or is illegally parked in a properly designated fire lane;

f) when the person or persons in charge of a vehicle are by reason of physical injuries, intoxication, illness or other cause incapacitated to such an extent as to be unable to provide for its custody or removal, and (i) the vehicle is left as described elsewhere in Paragraph 1 of this subsection, or (ii) the location of the vehicle is such that a reasonable person would believe that its owner would desire its relocation or removal. However, nothing in this subparagraph shall prevent a person who is incapacitated and is not intoxicated or otherwise mentally impaired from requiring that the vehicle not be moved if the sole basis for removal is pursuant to part (ii) of this subparagraph;

g) when the driver or person in control of a vehicle is lawfully taken into custody by a police officer, and said person is unable to immediately provide for the custody or removal of the vehicle, and (i) the vehicle is left as described elsewhere in paragraph 1 of this subsection or (ii) the location of the vehicle is such that a reasonable person would believe that its owner would desire its relocation or removal. However, nothing in this subparagraph shall prevent a person who is taken into custody and is not intoxicated or otherwise mentally impaired from requiring that the vehicle not be moved if the sole basis for removal is pursuant to (ii) of this subparagraph;

h) when an abandoned, unattended, wrecked, burned or partially dismantled vehicle is creating a traffic hazard because of its position in relation

to the street, alley, or public way or its physical appearance is causing traffic to be impeded; (*)

i) wherever the use of a street, alley or public way or any portion thereof is authorized by the municipality for a purpose other the normal flow of traffic, or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with such use or movement, and signs giving notice that a parked vehicle may be towed are erected or placed along the street, alley or public way at least 24 hours prior to the removal; (66-7-351 NMSA 1978)

j) when any vehicle is parked or left standing where stopping is prohibited by ordinance or other state or local law. No vehicle may be removed pursuant to this paragraph unless signs are posted at least 24 hours prior to the removal giving notice that the area is a tow-away zone;

k) when any vehicle is parked or standing in a manner so as to obstruct necessary emergency services, law enforcement services, the routing of traffic at the scene of a disaster, or when removal is otherwise necessary in the interest of public safety because of any emergency, and moving the vehicle to a legal parking location is impractical. However, the owner or operator of a vehicle so relocated or removed shall not be subject to any relocation, removal or storage charges, if the vehicle is otherwise lawfully parked. Such charges shall be paid by the municipality, except that in the case of emergency utility repairs such charges shall be paid by the utility company seeking removal;

l) when a vehicle is parked, left unattended or abandoned during a fire, flood, storm or other public emergency which is apt to cause substantial damage to the vehicle, removal is in the best interest of the owner, and moving the vehicle to a safe legal location is impractical;

m) when a vehicle is either unattended or disabled and loaded with either a dangerous, flammable, combustible or explosive substance which, either by its presence or load conditions is likely to harm the health or safety of the public and moving the vehicle to a safe, legal location is impractical;

n) when any vehicle is parked in such a manner as to obstruct or interfere with any road, sidewalk or right-of-way maintenance or construction, or any non-emergency utility work, and it is impractical to relocate the vehicle to another point where parking is legal. No vehicle shall be removed unless signs are posted giving notice of the work to be done and the possibility of removal at least 24 hours prior to the removal; or

o) when a vehicle is parked: on a sidewalk; within an intersection; on a crosswalk; within twenty (20) feet of a crosswalk at an intersection; within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway; between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the municipality indicates a different length by signs or markings; within fifty (50) feet of the nearest rail of a railroad crossing; within twenty (20) feet of

the driveway entrance to any fire station and if properly signposted on the side of the street opposite the fire station entrance where posted; alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic; or on the roadway side of any vehicle stopped or parked at the edge or curb of a street. (66-7-351 NMSA 1978)

(2) In lieu of towing and impoundment, a municipal police officer, or any municipal employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws, may relocate or cause to be relocated any vehicle from any street, alley or public way within the municipal corporate limits, without prior notice to the owner or operator thereof when the relocation to a safe, legal location is practical and the vehicle is found under the circumstances set forth in subparagraphs e, k, l, m or n of paragraph 1 of this subsection. (*)

(3) Whenever a vehicle could be impounded, removed or relocated pursuant to subsection D of this section and the driver of the vehicle is present, the police officer or authorized employee may order the driver to move the vehicle to another location. (66-7-350)

E. Notice and Procedure Following Summary Impoundment or Relocation.

(1) After a vehicle is towed or relocated pursuant to subsection D of this section, the Chief shall send written notice within 24 hours of the towing to the owner of the vehicle.

(2) The notice shall contain the following information:

a) the license plate number, make, type and color of the vehicle;

b) the location of the vehicle at the time of impoundment or relocation;

c) a statement that the vehicle has been taken into custody and stored, or a statement that the vehicle has been relocated;

d) the reason for impoundment or relocation;

e) the location and telephone number of the storage facility where the vehicle is being kept or the place to which the vehicle was relocated;

f) a statement that daily storage charges will be assessed in addition to a towing charge if the removal was proper;

g) a statement that the owner may obtain release of the vehicle by posting bond or paying all amounts due under this ordinance;

h) a statement that the owner has the right to contest the validity of the impoundment or relocation by requesting in writing a hearing before the municipal judge within thirty (30) days after written notice is given;

i) a statement that failure to obtain release of the vehicle if impounded will cause it to be sold or otherwise disposed of in accordance with state law; and

j) a phone number and name or title of a municipal employee from whom the owner can obtain further information.

(3) The hearing, if requested in a timely manner, shall be held within 120 hours (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the owner. The municipal judge's decision shall be limited to:

a) whether the vehicle was lawfully impounded or relocated for one or more of the reasons set forth in Subsection D of this section and

b) whether the vehicle, if lawfully impounded, should be released at the City's expense.

Upon receipt of the request for a hearing on the legality of an impoundment, the municipal judge shall notify the storage facility of the hearing and no lien shall be foreclosed by the storage facility as allowed by state law until the judge has ruled on the legality of the impoundment. If the municipal judge finds that the vehicle in question was not lawfully impounded or that the vehicle should otherwise be released at the municipality's expense, he shall issue and date a Certificate of Release, indicating the unlawful impoundment, or the release at municipal expense, or both, and a copy of the release shall be given to the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the authorized storage facility having custody of the vehicle shall release the vehicle to its owner and towing and storage fees shall be paid by the municipality in accordance with arrangements to be made between the municipality and the authorized storage facility. If the owner fails to present such certificate to the authorized storage facility having custody of the vehicle within 24 hours of its receipt, excluding days when the authorized storage facility is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement.

(4) The decision of the municipal judge may be appealed to the district court. (*)

F. Abandoned Vehicles.

(1) Any municipal police officer, or any municipal employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws, may order the impoundment of any abandoned vehicle within the municipal corporate limits. A vehicle is abandoned if:

a) the vehicle is parked on or along any street, alley or public way and the vehicle displays no current license plate; or

b) the vehicle is left unattended on or along any street, alley or public way in the same place for a period of 72 hours without a valid police sticker as defined in paragraph 2 of this subsection.

(2) The Chief may issue a sticker temporarily permitting street storage, upon application of any owner or agent of an owner for any vehicle which is operable and has a current license plate. Stickers shall expire fifteen (15) days after issuance. No owner, whether an individual, business, corporation, organization, partnership or trust, is entitled to more than four stickers at any time.

(3) When a vehicle is abandoned on or along a street, alley or public way under circumstances which do not allow summary removal or relocation pursuant to subsection D of this section, a notice shall be attached to the vehicle in a manner which is readily visible containing the following information:

a) the date and time the notice is affixed to the automobile;

b) a statement that, pursuant to this section of this ordinance the vehicle will be considered abandoned and may be towed and stored at the owner's expense if it is not removed within ten (10) days of the time that the notice is affixed;

c) a statement that if the vehicle is impounded and no hearing is requested or it is not claimed, it can be sold after thirty (30) days as provided in state law;

d) a statement that the owner has the opportunity to challenge the proposed action at a hearing if a written request is submitted to the municipal judge within 72 hours after notice is given as provided in paragraph 4 of this subsection;

e) the telephone number where additional information can be obtained; and

f) the identity of the person affixing the notice.

(4) Written notice containing the same information specified in paragraph 3 of this subsection plus the location and a description of the vehicle shall be mailed to the owner of the vehicle within 24 hours after the notice is affixed. However, if written notice is not given within 24 hours after the notice is placed on the vehicle, then the ten (10) day waiting period shall be extended the amount of time between the placing of notice on the vehicle and the giving of written notice.

(5) Upon timely receipt of a request for a hearing, the municipal judge shall order a delay of the impoundment of the vehicle until after the hearing.

(6) The hearing, if requested in a timely manner, shall be held within 120 hours (excluding weekends and municipal holidays) of receipt of the request,

unless the hearing is continued with the agreement of the owner. At the hearing, the municipal judge shall only determine whether the vehicle is or is not abandoned.

(7) If the municipal judge determines that the vehicle is abandoned, he shall so notify the Chief, who shall cause the impoundment of the vehicle, unless the vehicle is removed within 24 hours of the judge's decision.

(8) If the vehicle is removed pursuant to paragraph 7 of this subsection, a person challenging the impoundment shall be entitled to challenge the decision of the municipal judge by appeal to District Court.

(9) If an abandoned vehicle is impounded, and the owner has not obtained a hearing prior to the impoundment, the owner may file a request for a hearing with the municipal judge on the legality of the impoundment within thirty (30) days after impoundment. Upon receipt of the request for a hearing, the municipal judge shall notify the storage facility of the hearing and no lien shall be foreclosed by the storage facility as allowed by state law until the judge has ruled on the legality of the impoundment. If the municipal judge rules that the impoundment was illegal, then the municipal judge shall issue and date a Certificate of Release and a copy of the release shall be given to the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the authorized storage facility having custody of the vehicle shall release the vehicle to its owner and towing and storage fees shall be paid by the municipality in accordance with arrangements to be made between the municipality and the authorized storage facility. If the owner fails to present such certificate to the authorized storage facility having custody of the vehicle within 24 hours of its receipt, excluding days when the authorized storage facility is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement. (*)

G. Impoundment for Investigation Evidence or Forfeiture.

The notice, hearing and bond provisions set forth in this section shall not apply to impoundment of the following vehicles for which impoundment is hereby authorized:

(1) a vehicle which is impounded for purposes of a criminal investigation or as evidence of a crime; or

(2) a vehicle which is lawfully seized pursuant to state or federal law. (*)

H. Release of Vehicles.

(1) The municipal judge or his designated representatives may order the release of an impounded vehicle if a hearing has been requested on the legality of impoundment and upon the posting of bond as set by the municipal judge or his designee. When bond is posted the vehicle shall be released into the possession of the owner or his designee.

(2) In all other cases, upon proof of ownership, an impounded vehicle shall be released only after payment of the accumulated penalties by the owner or his designee, as provided in subsection I.

(3) The owner shall forfeit the bond if the owner fails to appear at the hearing before the municipal court.

(4) The owner shall be entitled to reimbursement from the municipality for all bonds posted and penalties paid if after hearing and appeal, if any, it is determined that the impoundment or relocation was not valid.

(5) This subsection does not authorize release of any vehicle held for investigation or as evidence of a crime or seized pursuant to state or federal law. Such vehicle shall be released only upon the written order of the police officer responsible for its impoundment or upon an affirmative written statement by the Chief that such vehicle is no longer needed for investigative or evidentiary purposes or for forfeiture proceedings. The municipality shall bear the cost of towing and storage for such impoundments. (*)

I. Penalties.

(1) Each time a vehicle is lawfully towed or relocated pursuant to this section the owner shall pay a fine of fifty dollars ($50.00), unless the municipality is required to pay for removal or relocation.

(2) Each day a vehicle is stored pursuant to a lawful impoundment, the owner shall pay a fine of ten dollars ($10.00) a day unless the municipality is required to pay for removal or relocation.

(3) Nothing in this section shall prevent a person from being found in violation of any other part of this ordinance and from being liable for any other penalty, fee or charge assessed pursuant to this ordinance. (*)

12-12-19 ABANDONED VEHICLES ON PRIVATE PROPERTY.

A. A person upon whose property or in whose possession is found an abandoned vehicle or motor vehicle, shall have authority to sell, retain, give away or dispose of the abandoned vehicle or motor vehicle to any person licensed under Sections 66-4-1 through 66-4-9 NMSA 1978 provided that he notifies a law enforcement agency prior to such disposal and obtains from that agency a written clearance stating that neither the agency's records nor the computerized records of the National Crime Information Center indicates that the vehicle or motor vehicle has been reported as stolen, and either:

(1) the vehicle or motor vehicle in question regardless of its age, is either totally wrecked or in such a state of disrepair that it is suitable only for dismantling purposes;

(2) the vehicle or motor vehicle in question is at least eight (8) years of age or older; or

(3) the vehicle in question has been placed in any storage or wrecker yard at the request of a law enforcement agency or a property owner upon whose property the vehicle or motor vehicle was abandoned and has remained unclaimed in said yard for a period of thirty (30) days, in which case the owner of the storage yard may proceed to make a claim against the motor vehicle or vehicle, as specified in Subsection C of Section 66-3-119 NMSA 1978 as though it were abandoned. Any person wishing to obtain such vehicle may not charge more than fifty cents ($.50) per day for storage unless he is licensed as a vehicle storage yard, and he must notify owners and lien-holders within thirty (30) days or lose all rights to claim such vehicle.

B. Any vehicle which is less than eight (8) years of age or in such a state of repair that it will be placed back into service or which is not to be used for dismantling purposes, or which a property owner wishes to retain for his own use or to sell to any one other than a licensed dismantler, said person shall proceed to make claim for such vehicle or motor vehicle through a lien process and obtain a new certificate of title prior to disposal. (66-3-121 NMSA 1978)

12-12-20 AUTHORIZED IMMOBILIZATION OF VEHICLE. When a driver, owner or person in charge of any vehicle has received a notice to answer to a charge against him for violation of any parking provisions of this ordinance and the driver, owner or person in charge of the vehicle has failed to appear and answer the charge, members of the police department or employees of this municipality acting in their official capacity may temporarily and for a period of 48 hours immobilize the vehicle when found upon a street by installing on or attaching to the vehicle a device designed to restrict the normal movement of the vehicle.

A. When the vehicle is so immobilized, the member of the police department or employee of this municipality installing or attaching the device shall conspicuously affix to the vehicle a notice in writing on a form to be provided by the chief of police advising the driver, owner or person in charge of the vehicle that the vehicle has been immobilized by this municipality for violation of this ordinance and also advising him of the provisions for release of the vehicle.

B. No person shall remove the immobilizing device or move the vehicle before the device is released by the police department or the clerk of the municipal court.

C. Where the vehicle has been properly immobilized as provided in this section, a fee of ten dollars ($10.00) shall be charged by the police department or clerk of the municipal court before releasing the vehicle.

D. Parking restrictions, if any, otherwise applicable shall not apply while the vehicle is immobilized as provided in this section. (*)

12-12-21 LIABILITY FOR DAMAGE.

A. The public highways in the municipality are dedicated to the reasonable use thereof by the public.

B. It shall be unlawful for any person to injure or damage any public street or any bridge, culvert, sign, signpost, or structure upon or used or constructed in connection with any public street for the protection thereof or for protection or regulation of traffic thereon by any unusual, improper or unreasonable use thereof, or by the careless driving or use of any vehicle thereon, or by willful mutilation, defacing or destruction thereof.

C. It shall be considered unreasonable use of any bridge or structure to operate or conduct upon or over the same any vehicle, tractor or engine, not in accordance with Sections 66-7-401 through 66-7-416 NMSA 1978.

D. It shall be considered unreasonable use of any improved roadway or street, to operate, drive or haul thereon any truck, tractor or engine in such manner or at times when the surface thereof is in a soft or plastic condition and the road or portion thereof has been closed pursuant to law, or by order of the administrator.

E. It shall be unlawful to erect or maintain any fence or any other structure across any street, highway or roadway without written permit from the authorities having control thereof.

F. The operator and the owner of such vehicle, truck, tractor or engine from whom the driver or operator has permitted possession at the time thereof shall be jointly and severally liable for the actual damage caused by the operation, conducting or hauling thereof over any public highway, street, bridge, culvert or structure in violation of any provision of this ordinance to be collected by suit brought in the name of this municipality and such vehicle, truck, tractor or engine may be attached and held to satisfy any judgment for such damages.

G. The proceeds of any such judgment shall be paid to the treasurer of this municipality and placed to the credit of the fund for the construction and improvement of roads and streets. (66-7-416 NMSA 1978)

12-12-22 **SUNDAY ACTIONS.** Judicial proceedings under any provision of this ordinance are valid when performed on Sunday, the same as on other days of the week. (66-8-8 NMSA 1978)

circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished:

(1) Upon a first conviction by imprisonment for not less than five days nor more than ninety days, or by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00), or both; and

(2) On a second or subsequent conviction by imprisonment for not less than ten days nor more than ninety days, or by a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300.00), or both. (66-8-113 NMSA, 1978)

12-6-12.4 CARELESS DRIVING.

A. Any person operating a vehicle on the street shall give his full time and entire attention to the operation of the vehicle.

B. Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of careless driving. (66-8-114 NMSA 1978)

12-6-12. 5 OPERATORS AND CHAUFFEURS MUST BE LICENSED.

A. Except those expressly exempted by Section 66-5-4 NMSA 1978, no person shall drive any motor vehicle or moped upon a street in this municipality unless he holds a valid license issued under the provisions of the New Mexico Motor Vehicle Code.

B. Any person licensed under the provisions of the New Mexico Motor Vehicle Code, or expressly exempted from licensure, may exercise the privilege granted upon all streets and highways in this municipality. (66-5-2 NMSA 1978)

C. No person, whether a resident or non-resident of the State of New Mexico, shall operate a motor vehicle or moped upon a street in this municipality in violation of any restrictions with respect to the type of, or special mechanical devices required on, a motor vehicle which the licensee may operate or any other restrictions applicable to the licensee. (*)

D. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle or moped, and shall display the same upon demand of a magistrate or police officer. However, no person charged with violating this section shall be convicted if he produces in court a driver's license theretofore issued to him and valid at the time of his arrest. (66-5-16 NMSA 1978)

12-6-12.6 UNLAWFUL USE OF LICENSE; DRIVING WHEN PRIVILEGE TO DO SO HAS BEEN SUSPENDED OR REVOKED.

No person shall:

A.

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;

(2) lend his driver's license or permit to any other person or knowingly permit the use thereof by another;

(3) display or represent as one's own any driver's license or permit not issued to him;

(4) fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked or canceled;

(5) permit any unlawful use of driver's license or permit issued to him; (66-5-37 NMSA 1978)

(6) drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended and who knows or should have known that his license was suspended . Upon conviction, the person shall be punished by imprisonment for not less than four days nor more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than five hundred dollars ($500.00). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. (66-5-39 NMSA 1978)

(7) drive a motor vehicle on a highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Sec. 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than ninety days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than $500. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court; and

(8) notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300) and not more than five hundred dollars ($500) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the

person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. (66-5-39.1 NMSA 1978)

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle. (66-5-39.1 NMSA 1978)

12-6-12.7 FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER. No driver of a motor vehicle shall willfully fail or refuse to bring his vehicle to a stop, or otherwise flee or attempt to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop.

A. The signal given by the police officer may be by hand, voice, emergency light or siren.

B. The officer giving the signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle. (*)

12-6-12.8 UNATTENDED MOTOR VEHICLE. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake, or placing the transmission in parking position, thereon and, when standing upon any grade, turning the front wheels in such a manner that the vehicle will be held by the curb or will leave the street if the brake fails. (66-7-353 NMSA 1978)

12-6-12.9 LIMITATIONS ON BACKING.

A. The driver of a vehicle shall not back it:

(1) unless the movement can be made with reasonable safety and without interfering with other traffic;

(2) upon any shoulder or roadway of any controlled-access street, or upon the exit or entry road of any controlled-access street; (66-7-354 NMSA 1978)

(3) into an intersection or around a corner unless preceded by an observer to safely direct the movement; or

(4) from a private driveway into any street unless the movement can be made with safety and without interfering with other traffic on the street. (*)

B. In no case shall a vehicle be backed more than 60 feet unless preceded by an observer to safely direct the movement. (*)

12-6-12.10 OBSTRUCTION TO DRIVER'S VIEW OR DRIVING MECHANISM.

A. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

B. No passenger in a vehicle shall ride in such position as to interfere with driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. (66-7-357 NMSA 1978)

12-6-12.11 RESTRICTION ON USE OF TELEVISION IN MOTOR VEHICLES. It is unlawful to operate in this municipality any motor vehicle equipped with a television screen, of whatever type, upon which images may be projected or shown, if the screen is within the normal view of the driver of the motor vehicle unless the television is solely used as an aid to the driver in the operation of the vehicle. As used in this section "television screen" does not include closed circuit monitors or computer terminal monitors used by law enforcement agencies in law enforcement motor vehicles. (66-7-358 NMSA 1978)

12-6-12.12 COASTING PROHIBITED. The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged. (66-7-360 NMSA 1978)

12-6-12.13 FOLLOWING FIRE APPARATUS PROHIBITED. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (66-7-361 NMSA 1978)

12-6-12.14 CROSSING FIRE HOSE. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, without the consent of the fire department official in command. (66-7-362 NMSA 1978)

12-6-12.15 DRIVING THROUGH SAFETY ZONES PROHIBITED. No vehicle shall at any time be driven through or within a safety zone. (66-7-361 NMSA 1978)

12-6-12.16 VEHICLES SHALL BE DRIVEN ONLY ON STREETS, PRIVATE ROADS AND DRIVEWAYS. No driver of a vehicle shall operate or be in control of a vehicle on other than the portions of streets improved, designed and ordinarily used for vehicular traffic, private roads, driveways or alleys in this municipality, except as otherwise provided by this ordinance or as otherwise authorized or designated by the administrator or his designated representative. (*)

12-6-12.17 DRIVING ON SIDEWALK AND PRIVATE PROPERTY.

A. No person shall drive any vehicle on, or across a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

B. No person shall drive on private property, except upon a permanent or authorized temporary driveway or parking area, without the express authorization of the owner, lessee or other person authorized by the owner to control the use of the private property. (*)

12-6-12.18 PROHIBITED ACTIVITIES WHILE DRIVING. No person shall:

(1) drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;

(2) drive while having in his lap any person, adult or minor, or any animal;

(3) drive while seated in the lap of another person while the vehicle is in motion;

(4) drive a vehicle while having either arm around another person; or

(5) operate a motor vehicle's equipment, including but not limited to the vehicle horn or lights, in such manner as to distract other motorists on the public way or in such a manner as to disturb the peace. (*)

12-6-12.19 RACING ON STREETS. *Amended July, 2007*

A. Unless written permission setting out pertinent conditions is obtained from the chief of the municipal police, and then only in accordance with such conditions (*) no person shall drive a vehicle on a street in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law, and no person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. As used in this section:

(1) "drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit;

(2) "race" means the use of one (1) or more vehicles in a manner to outgain or outdistance another vehicle, prevent another vehicle from passing, arrive at a

given destination ahead of another vehicle or test the physical stamina or endurance of drivers over long-distance routes. (66-8-115 NMSA 1978)

(3) "exhibition driving" consists of intentionally fish-tailing, peeling-out, losing traction, and burning of rubber while operating a motorcycle or motor-driven vehicle,, includes intentionally operating the vehicle on a single tire (commonly known as a "wheelie"); operating a vehicle from a standing position; or operating the vehicle without at least one hand gripping the handlebars. (*)

12-6-12.20 PROCESSIONS.

A. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while the procession is in motion and when the vehicles in the procession are conspicuously designated as required in this section. This provision shall not apply at intersections where traffic is controlled by police officers.

B. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the street as practicable and shall follow the vehicle ahead as closely as is practicable and safe.

C. A funeral composed of a procession of vehicles shall be identified by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.

D. No funeral, procession or parade containing 200 or more persons or 50 or more vehicles, except the Armed Forces of the United States, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply. (*)

12-6-12.21 DRIVER TO TAKE PRECAUTIONS APPROACHING THE BLIND.

A. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color, with or with out a red tip, or using a guide dog shall take all necessary precautions to avoid injury to the blind pedestrian. Any driver who fails to take necessary precautions shall be liable in damages for any injury caused to the pedestrian.

B. A totally blind or partially blind pedestrian not carrying a cane or using a guide dog shall have all the rights and privileges conferred by law on other persons, and the failure of a totally blind pedestrian to carry a cane or to use a guide dog shall not be held to constitute nor be evidence of contributory negligence. (28-7-4 NMSA 1978)

12-6-12.22 OFFENSES BY PERSONS OWNING OR CONTROLLING

VEHICLES. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or to permit the operation of such vehicle upon a street in this municipality in any manner contrary to this ordinance. (66-8-121 NMSA 1978)

12-6-12.23 PERMITTING UNAUTHORIZED PERSONS TO DRIVE.

A. No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any street when such minor is not authorized under state law or is in violation of any of the provisions of the New Mexico Motor Vehicle Code. (66-5-40 NMSA 1978)

B. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street by any person who is not authorized under state law or is in violation of any of the provisions of the New Mexico Motor Vehicle Code. (66-5-41 NMSA 1978)

12-6-12.24 PARTIES TO UNLAWFUL ACTS. Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be unlawful, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this ordinance or of the Motor Vehicle Code is likewise guilty of such offense. (66-8-120 NMSA 1978)

12-6-13 MISCELLANEOUS TRAFFIC REGULATIONS.

12-6-13.1 OFFENSES RELATING TO DRIVING UNDER THE INFLUENCE.

A. No owner or person in control of a motor vehicle shall permit it to be driven or operated by any person who is a habitual user of narcotic drugs or by any person who is under the influence of intoxicating liquor, narcotic drugs or any other drug to a degree which renders him incapable of safely driving the vehicle.

B. No person under the influence of intoxicating liquor, narcotic drug or other drug to a degree which renders him incapable of driving safely shall start or attempt to operate a vehicle. (*)

12-6-13.2 UNLAWFUL RIDING.

A. No person shall ride or permit another person to ride in or on any portion of a vehicle not designated or intended for the use of passengers.

B. This provision shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise. (*)

12-6-13.3 UNHITCHED TRAILER ON STREET. No person shall leave any type of trailer unhitched upon a street. (*)

12-6-13.4 MOVING OR MOLESTING UNATTENDED VEHICLES.

A. No person shall individually or in association with one or more others do any of the following:

(1) purposely, and without authority from the owner, start or cause to be started the engine of any motor vehicle;

(2) purposely and maliciously shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle;

(3) purposely scratch or damage the chassis, running gear, body, sides, tip covering or upholstering of a motor vehicle which is the property of another;

(4) purposely destroy any part of a motor vehicle or purposely cut, mash, mark, or in any other way, destroy or damage any part, attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner;

(5) purposely drain or start the drainage of any radiator, oil tank or gas tank upon a motor vehicle, without the permission of the owner;

(6) purposely put any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage the same or impede the working of the machinery thereof;

(7) maliciously tighten or loosen any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

(8) purposely release the brake upon a standing motor vehicle with the intent to injure said machine. (66-3-506 NMSA 1978)

B. The foregoing provisions shall not apply to a police officer or member of the fire department or street maintenance department who in discharge of his duty legally moves or causes to be moved any unattended vehicle, nor to any person who moves the vehicle at the direction of or in compliance with orders from a police officer or member of the fire department or street maintenance department who in the discharge of his duties legally orders or directs the moving of the unattended vehicle. (*)

12-6-13.5 DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY.

A. No person shall throw or deposit upon any street any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street.

B. Any person who drops, or permits to be dropped or thrown, upon any street any destructive or injurious material shall immediately remove the same or cause it to be removed.

C. Any person removing a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle. (66-7-364 NMSA 1978)

D. No vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a street in cleaning or maintaining such street.

E. No person shall operate on any street any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the street. (66-7-407 NMSA 1978)

12-6-13.6 TRAINS AND BUSES NOT TO OBSTRUCT STREETS. No person or corporation shall direct the operation of or operate any railroad train or bus in such manner to prevent the use of any street for purposes of travel for a period of time longer than five minutes. (*)

12-6-13.7 BOARDING OR ALIGHTING FROM VEHICLES.

A. No person shall board or alight from any moving vehicle or any vehicle which is stopped in traffic.

B. No person shall alight or enter a vehicle except when it is stopped at a curb or in a passenger loading zone. (*)

12-6-13.8 IMPROPER OPENING OF DOORS. No person shall:

(1) open the door of a vehicle on the side near moving traffic unless it is reasonably safe to do so, and the door can be opened without interfering with the movement of traffic; or

(2) leave a door of a vehicle open on the side of the vehicle near moving traffic for a period of time longer than necessary to load or unload passengers. (66-7-367 NMSA 1978)

12-6-13.9 OCCUPIED MOVING HOUSE TRAILER. No person shall:

(1) occupy a house trailer while it is being towed upon a street; or

(2) tow a house trailer on any street when the house trailer is occupied by any person. (66-7-366 NMSA 1978)

12-6-13.10 ANIMALS ON STREET.

A. It is unlawful for any person, during the hours of darkness to ride a horse or other animal upon the traveled portion of any street which is normally used by motor vehicles.

B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced street at any time or, during the hours of darkness, to drive livestock along or upon any street which is normally used by motor vehicles.

C. Owners of livestock ranging in pastures through which unfenced roadways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using said roadways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing his animals to range in said pasture. (66-7-363 NMSA 1978)

12-6-13.11 DRIVING ON MOUNTAIN STREETS. The driver of a motor vehicle traveling through defiles or canyons or on mountain streets shall hold such motor vehicle under control and as near the right-hand edge of the street as reasonably possible. (66-7-359 NMSA 1978)

12-6-13.12 CHILD PASSENGER RESTRAINT; PENALTY; ENFORCEMENT.

A. A person shall not operate a passenger car, van or pickup truck in this state except for an authorized emergency vehicle, public transportation or school bus unless all passengers less than eighteen years of age are properly restrained.

B. Each person less than eighteen years of age shall be properly secured in a child passenger restraint device or by a seat belt, unless all seating positions equipped with seat belts are occupied, as follows:

(1) children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag:

(2) children one year of age through four years of age, regardless of weight, or children who weigh less than forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards;

(3) children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards; and

(4) children seven years of age through twelve years of age shall be properly secured in a child passenger device or by a seat belt.

C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

D. Failure to be secured by a child passenger restraint device or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages. (66-7-369 NMSA 1978)

E. Failure to be secured by a child passenger restraint device or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages. (66-7-369 NMSA 1978)

12-6-13.13 MANDATORY USE OF SEATBELTS.

A. Except as provided by Section 12-6-13.12 and in Subsection B of this section, each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less manufactured with safety belts in compliance with federal motor vehicle safety standard number 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion on any street or highway.

B. This section shall not apply to an occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of the United States postal service while performing the duties of a rural letter carrier. (66-7-372 NMSA 1978)

C. Each person violating Subsection A of Section 12-6-13.13 shall be fined an amount not less than twenty-five dollars ($25.00) or more than fifty dollars ($50.00) including court costs.

D. Failure to be secured by a child passenger restraint device or by a safety belt as required in this Section shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

E. The provisions of this Section shall be enforced whether or not associated with the enforcement of any other statute. (66-7-373 NMSA 1978)

12-6-13.14 CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN A MOTOR VEHICLE PROHIBITED--EXCEPTIONS.

A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any street within this municipality.

B. No person shall have in his possession on his person, while in a motor vehicle upon any street within this municipality, any bottle, can or other receptacle containing any alcoholic beverage which has been opened or had its seal broken or the contents of which have been partially removed.

C. It is unlawful for the registered owner of any motor vehicle, to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any street within this municipality, any bottle, can or other receptacle containing any alcoholic beverage which has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:

(1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;

(2) the living quarters of a motor home or recreational vehicle;

(3) a truck camper;

(4) the bed of a pick-up truck when the bed is occupied by passengers.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to the driver or owner of or any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act or proper legal authority.

D. The provisions of this section do not apply to:

(1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that persons motor vehicle for medicinal purposes;

(2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or his agent's motor vehicle; or

(3) any person who is employed by a person licensed by the Alcoholic Beverage Control Act, while discharging his duties as an employee (66-8-138)

E. Penalties

(1) Whoever is guilty of a second or subsequent violation of any provision of this ordinance shall be sentenced pursuant to this code.

(2) In addition to any other penalty or disposition ordered pursuant to law, upon conviction for a second or subsequent violation of the provisions of Section 12-6-13.14, the convicted person shall have his driver's license revoked for a period of three months upon a second violation and for one year upon a third or subsequent violation. (66-8-139 NMSA 1978)

F. "Alcoholic Beverages" Defined. As used in this ordinance "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol but excluding medicinal bitters. (66-1-4.1 NMSA 1978)

12-6-13.15 LITTERING

A. Littering consists of discarding refuse:

(1) on public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities, or otherwise in accordance with lawful direction; or

(2) on private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant thereof. (30-8-4 NMSA 1978).

B. Whoever commits littering is guilty of a petty misdemeanor. The use of uniform traffic citations is authorized for the enforcement of this section. The court may to the extent permitted by law, as a condition to suspension of any other penalty provided by law, require a person who commits littering to pick up and remove from any public place or any private property, with prior permission of the legal owner, any litter deposited thereon.

C. Any jail sentence imposed pursuant to Subsection B of this section may be suspended, in the discretion of the magistrate or judge, upon conditions that the offender assist in litter clean-up in the jurisdiction for a period not to exceed the length of the suspended sentence. (*)

12-6-14 PEDESTRIANS' RIGHTS AND DUTIES.

12-6-14.1 PEDESTRIAN OBEDIENCE TO TRAFFIC-CONTROL DEVICES AND TRAFFIC REGULATIONS. Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 12-5-6, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions provided in this ordinance. (66-7-333 NMSA 1978)

12-6-14.2 PEDESTRIANS RIGHT OF WAY IN CROSSWALKS. *Amended July, 2007*

A. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is in the crosswalk.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. Subsection A shall not apply under the conditions stated in Section 12-6-14.4.

D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (66-7-334 NMSA 1978)

12-6-14.3 PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK. Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (66-7-338 NMSA 1978)

12-6-14.4 CROSSING AT OTHER THAN CROSSWALKS.

A. Every pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the street.

B. Any pedestrian crossing a street at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the street.

C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk. (66-7-335 NMSA 1978)

D. No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (*)

12-6-14.5 PEDESTRIANS ON STREETS.

A. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent street.

B. Where sidewalks are not provided any pedestrian walking along and upon a street shall when practicable walk only on the left side of the street or its shoulder facing traffic which may approach from the opposite direction. (66-7-339 NMSA 1978)

12-6-14.6 PEDESTRIANS SOLICITING RIDES OR BUSINESS.

A. No person shall stand in a street for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

B. No person shall stand on or in proximity to a street for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street. (66-7-340 NMSA 1978)

12-6-14.7 OBEDIENCE OF PEDESTRIANS TO BRIDGE AND RAILROAD SIGNALS.

A. No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.

B. No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed. (*)

12-6-14.8 DRIVERS TO EXERCISE DUE CARE. Notwithstanding the foregoing provisions of this ordinance every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any street and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a street. (66-7-337 NMSA 1978)

12-6-15 REFERENCE TO VEHICLES UPON THE STREETS.

A. The provisions of Article 6 of this ordinance relating to the operation of vehicles, refer exclusively to the operation of vehicles upon the streets or highways, except where a different place is specifically referred to in a given section.

B. The provisions of Article 4 of this ordinance and Sections 12-6-12.1 through 12-6-12.3 of this ordinance shall apply upon the streets and highways and elsewhere throughout this municipality. (66-7-2 NMSA 1978)

12-6-16 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES
Amended July, 2007

A. As used in this section, "electric personal assistive mobility device" means a self-balancing device having two non-tandem wheels designed to transport a single person by means of an electric propulsion system with an average power of one horsepower and with a maximum speed on a paved level surface of less than twenty miles

per hour when powered solely by its propulsion system and while being ridden by an operator who weighs one hundred seventy pounds.

B. An electric personal assistive mobility device shall be equipped with:

(1) front, rear and side reflectors;

(2) a braking system that enables the operator to bring the device to a controlled stop; and

(3) if operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.

C. The secretary of the state department of transportation shall by rule prescribe motor vehicle safety standards applicable to electric personal assistive mobility devices.

D. An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian, and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right of way to pedestrians.

E. Except as provided in this section, no other provisions of the Uniform Traffic Ordinance shall apply to electric personal assistive mobility devices.

F. An operator who violates a provision of Subsection B, C or D of this section shall receive a warning for the first offense. For a second offense, the operator shall be punished by a fine of ten dollars ($10.00). For a third or subsequent offense, in addition to the fine, the electric personal assistive mobility device shall be impounded for up to thirty days.

G. This section does not apply to personal assistive mobility devices used by persons with disabilities." (66-3-1102 NMSA 1978)

12-6-16.1 <u>NEIGHBORHOOD ELECTRIC CARS</u> *Added July, 2007*

A. A neighborhood electric car means a four-wheeled electric motor vehicle that has a maximum speed of more than twenty miles per hour but less than twenty-five miles per hour, complies with the federal requirements specified in 49 CFR 571.500 and shall be equipped with head lamps, stop lamps, front and rear turn signals lamps, tail lamps, reflex reflectors, a parking brake, at least one interior and one exterior rear view mirror, a windshield, windshield wipers, a speedometer, an odometer, braking for each wheel, seat belts and a vehicle identification number.

B. Except as provided for in Subsection C or D of this section, a neighborhood electric car, properly registered pursuant to provisions of the Motor Vehicle Code, in compliance with the Mandatory Financial Responsibility Act and driven by an individual with a valid driver's license, may be operated on any street, roadway or highway under the jurisdiction of either the state or a local authority if the posted maximum speed limit is thirty-five miles per hour or less; provided, a neighborhood

electric car may cross at an intersection or permitted crossing point at any street, roadway or highway that has a maximum speed limit higher than thirty-five miles an hour.

C. A local authority may prohibit the operation of neighborhood electric cars on any road under its jurisdiction if the governing body of the local authority determines that the prohibition is necessary in the interest of safety.

D. The department of transportation may prohibit the operation of neighborhood electric cars on any road under its jurisdiction if it determines that the prohibition is necessary in the interest of safety.

E. Neighborhood electric cars are exempt from the following provisions:

(1) the emblems or flashing light requirements for slow-moving vehicles in Section 66-3-887 NMSA 1987;

(2) any requirement for vehicle emission inspections adopted by a local authority pursuant to Subsection C of Section 74-2-4 NMSA 1978; and

(3) the minimum motor displacement requirements of Paragraph (2) of Subsection A of Section 66-7-405 NMSA 1978. (66-3-1103 NMSA 1978)

12-6-17 BOATING REGULATIONS AND OFFENSES BOATING WHILE INTOXICATED ACT

12-6-17.1 DEFINITIONS

A. "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

B. "conviction" means an adjudication of guilt and does not include imposition of a sentence;

C. "motorboat" means any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principle source of propulsion. "Motorboat" includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or a windsurf board. "Motorboat" does not include a houseboat or any other vessel that is moored on the water, but not moving on the water; and

D. "operate" means to physically handle the controls of a motorboat that is moving on the water.

12-6-17.2 OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS

A. It is unlawful for a person who is under the influence of intoxicating liquor to operate a motorboat.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to operate a motorboat.

D. Aggravated boating while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while operating a motorboat;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motorboat while under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Boating While Intoxicated Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. The offender shall be ordered by the court to attend a boating safety course approved by the national association of state boating law administrators. An offender ordered by the court to attend a boating safety course shall provide the court with proof that the offender successfully completed the course within seven months of his conviction or prior to completion of his probation, whichever period of time is less. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than seven hundred fifty dollars ($750). On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or subsequent conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than seven hundred fifty dollars ($750), or both; provided that if the sentence is suspended in whole or in part, the period of probation shall not exceed one year. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than one thousand dollars ($1,000).

12-6-17.3 GUILTY PLEAS--LIMITATIONS

A. When a complaint or information alleges a violation of 12-6-17.2 any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of 12-6-17.2, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to that act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

12-6-17.4 BLOOD-ALCOHOL TESTS--PERSONS QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY

A. Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from a person in the performance of a blood-alcohol or drug test. A physician, nurse, technician or technologist who withdraws blood from a person in the performance of a blood-alcohol or drug test that has been directed by a law enforcement officer, or by a judicial or probation officer, shall not be held liable in a civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence, nor shall a person assisting in the performance of the test, or a hospital wherein blood is withdrawn in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence. in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence.

12-6-17.5 BLOOD-ALCOHOL TEST--LAW ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES AUTHORIZED BY LAW

A. Nothing in this Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a blood-alcohol or drug test, except in the performance of his official duties or as otherwise authorized by law.

12-6-17.6 IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST

A. A person who operates a motorboat within this state shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to chemical tests of his blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purposes of determining the drug or alcohol content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating a motorboat while under the influence of an intoxicating liquor or drug.

B. The arrested person shall be advised by a law enforcement officer that failure to submit to a chemical test may be introduced into evidence in court and that the court, upon conviction, may impose increased penalties for the person's failure to submit to a chemical test.

C. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating a motorboat while under the influence of an intoxicating liquor or drug.

D. A person who operates a motorboat in this state and who is involved in a fatal boating incident shall be deemed to have given consent, subject to the provisions ofthe Boating While Intoxicated Act, to mandatory chemical tests of his blood or breath or both, as determined by a law enforcement officer and approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978.

12-6-17.7 CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN

A. A person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by the Boating While Intoxicated Act, and the test designated by the law enforcement officer may be administered.

12-6-17.8 ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF COSTS--ADDITIONAL TESTS.

A. Only the persons authorized by the Boating While Intoxicated Act shall withdraw blood from a person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to a test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test

shall be paid by the agency represented by the law enforcement officer at whose direction a chemical test was administered pursuant to 12-6-17.6.

12-6-17.9 USE OF TESTS IN CRIMINAL OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of 12-7-17.2.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into

past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

12-6-17.10 MOTORBOATS--INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION

A. A person convicted of a violation of the Boating While Intoxicated Act shall be assessed by the court, in addition to any other fee or fine, a fee of sixty-five dollars ($65.00) to defray the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

B. All fees collected pursuant to the provisions of this section shall be transmitted monthly to the crime laboratory fund. All balances in the crime laboratory fund collected pursuant to this section are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the department of health for the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

C. Payment of funds out of the crime laboratory fund of fees collected pursuant to this section shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration.

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☑ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☐ **OTHER ACTION**

SUBJECT: Approval of Ordinance 512 - Off Street Parking
DEPARTMENT: Executive
SUBMITTED BY: James R. Williams, City Manager
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

Staff have prepared Ordinance 512 - Off Street Parking for Commission approval. A notice of the public hearing being conducted tonight was sent by 1st class mail to each property owner within Zone A - Single Family and Zone B - Multifamily of the City of Lovington. Notice of the proposed ordinance and this public hearing has also been published in the newspaper and on the City website.

Your formal approval is required in order adopt this ordinance as written.

FISCAL IMPACT: *REVIEWED BY:* _____
(Finance Director)

ATTACHMENTS:

Ordinance 512 - Off Street Parking

RECOMMENDATION:

Motion to approve.

_____ **Department Head**

_____ **City Manager**

ORDINANCE NO. 512

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.16 – General Use Regulation, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17, CHAPTER 17.16 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.16.080 Off Street Parking

A. No truck tractor, semitrailer, the truck tractor individually, or the semitrailer individual is permitted to park anywhere within any residential zone of the City.

B. No commercial vehicles are to be parked and/or stored in the front yard, side yard, or rear yard setbacks within any residential zone of the City. Commercial vehicles are defined as vehicles with more than two axles, a vehicle used to transport hazardous materials requiring Department of Transportation placarding, construction vehicles designed for off road usage, and vehicles requiring the driver to have either a Class A or Class B drivers license or the equivalent. A non-commercial vehicle is defined as one that has a gross weight rating of not more than ten thousand (10,000) pounds and can be legally parked in a standard eight and a half (8.5) foot by twenty (20) foot parking space.

C. Parking generated by residential occupation shall not be permitted in the front, side, or rear yard setbacks except that the existing driveway, improved driveway, or parking pad may be used.

D. No more than forty (40) percent of the front, side, or rear yard setback can be dedicated to off-street parking.

E. All open off-street parking surfacing and access drives shall be designed and constructed utilizing the following types of acceptable coverage:

a. Four (4) inches of base coarse covered with a two (2) inch layer of asphalt; or
b. Minimum depth of six (6) inches of concrete; or
c. Compacted gravel; or
d. Cinder; or
e. Crushed stone

Parking surfaces constructed of compacted gravel, cinder, or crushed stone must have a delineated edge.

Grass and bare earth parking areas are prohibited.

F. No recreational vehicle shall be parked within the front or side yard setbacks of any property in any residential zone for more than a seventy-two (72) hour period. A recreational vehicle means each of the following:

a. Bus;
b. Camp trailer;
c. Camper;
d. Fifth-wheel travel trailer;
e. Trailer;
f. Motor-coach
g. Motor home
h. Boat;
i. Jet ski or other watercraft
j. All terrain vehicle

G. The follow exceptions and restrictions apply to off-street parking of recreational vehicles:

a. A single recreational vehicle may be parked adjacent to the driveway on a permitted paved area or pad provided that the recreational vehicle is parked a minimum of five (5) feet behind the back of the sidewalk, or eight and one-half (8 ½) feet behind the property line in cases where there is no sidewalk.
b. In addition to parking on parking pads, a single recreational vehicle may be parked on the driveway of a two-car garage of a residence, provided that the vehicle meets the setback requirements prescribed above for parking pad use.
c. Recreational vehicles may be parked within a street-side side yard setback provided such vehicles are behind a six (6) feet tall solid fence.
d. Recreational vehicles may be parked on an approved off-street parking surface or parking pad within the side and rear yard setbacks.

H. No recreational vehicle may be occupied for living, sleeping, or any other purposes while parked per the limitations listed above other

than a visitor's recreational vehicle, which may be used for the guest's accommodations for not more than seven (7) days.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2013.

CITY OF LOVINGTON

_____

DIXIE DRUMMOND, MAYOR

ATTEST:

_____

CAROL ANN HOGUE, CITY CLERK

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☑ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☐ **OTHER ACTION**

SUBJECT: Approval of Ordinance 513 - Annexation
DEPARTMENT: Planning and Zoning Commission
SUBMITTED BY: James R. Williams, City Manager
DATE SUBMITTED: October 28, 2013

STAFF SUMMARY:

Staff have prepared Ordinance 513 - Annexation for Commission approval. A notice of the public hearing being conducted tonight was sent by 1st class mail to each property owner within the City of Lovington as this change affects all established zoning districts. Notice of the proposed ordinance and this public hearing has also been published in the newspaper and on the City website.

Your formal approval is required in order adopt this ordinance as written.

FISCAL IMPACT: *REVIEWED BY:* _____
(Finance Director)

ATTACHMENTS:

Ordinance 513 - Annexation

RECOMMENDATION:

Motion to approve.

_____ **Department Head**

_____ **City Manager**

ORDINANCE NO. 513

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.12.040 – Annexation, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17, CHAPTER 17.12.040 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.12.040 Annexation

All territory proposed for annexation shall be studied by the Planning and Zoning Commission. If the Planning and Zoning Commission recommends approval of the annexation request, a second recommendation shall be prepared to assign the proposed territory a zoning district in conformance with the comprehensive plan. The City Commission shall consider both the annexation request and zoning recommendation concurrently at the next regularly scheduled meeting.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2013.

CITY OF LOVINGTON

_____
DIXIE DRUMMOND, MAYOR

ATTEST:

_____
CAROL ANN HOGUE, CITY CLERK

CITY OF LOVINGTON

COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 28, 2013

TYPE: ☐ **RESOLUTION** ☑ **ORDINANCE** ☐ **PROCLAMATION** ☐ **INFORMATION** ☐ **OTHER ACTION**

SUBJECT: Approval of Ordinance 514 - Industrial Zone Changes
DEPARTMENT: Planning and Zoning Commission
SUBMITTED BY:
DATE SUBMITTED: October 22, 2013

STAFF SUMMARY:

Staff have prepared Ordinance 514 - Industrial Zone Changes for Commission approval. A notice of the public hearing being conducted tonight was sent by 1st class mail to each property owner within Zone D - Industrial in the City of Lovington. Notice of the proposed ordinance and this public hearing has also been published in the newspaper and on the City website.

Your formal approval is required in order adopt this ordinance as written.

FISCAL IMPACT:

REVIEWED BY: _____
(Finance Director)

ATTACHMENTS:

Ordinance 514 - Industrial Zone Changes

RECOMMENDATION:

Motion to approve.

Department Head

City Manager

ORDINANCE NO. 514

An ordinance of the City of Lovington, New Mexico, amending Title 17, Chapter 17.32 – D Industrial District, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17, CHAPTER 17.32 BE AND HEREBY IS AMENDED AS FOLLOWS:

17.32.010 Regulations – In general

In the Industrial district, there may be any use; except, that there may be no building for residential use and no mobile trailers; provided, however, that this shall not preclude housing for supervisory, maintenance, or custodial personnel where industrial processes require them to live on the premises.

17.32.020 Prohibited Uses

Any building or premises may be used for any purpose not in conflict with any ordinance of the City regulating nuisances; provided, however, that no building or occupancy permit shall be issued for any of the following uses until, and unless the location of such use has been reviewed and recommended by the Fire Chief. Upon positive recommendation of the following uses by the Fire Chief, the City Commission may grant approval.

1. Acid manufacture;
2. Cement, lime, gypsum, or plaster of paris manufacture;
3. Distillation of bones;
4. Explosives manufacture or storage;
5. Fat rendering;
6. Fertilizer manufacture;
7. Gas manufacture;
8. Garbage, offal, or dead animals, reduction, or dumping;
9. Glue manufacture;
10. Milling plants;
11. Cotton gins;
12. Smelting of tin, copper, zinc, or iron ores;
13. Stockyards or slaughter of animals;
14. Any other uses which might be objectionable to, or adversely affect nearby residential districts because of odor, dust, smoke, gas, or noise.

APPROVED, PASSED, AND ADOPTED this _____ day of _____, 2013.

CITY OF LOVINGTON

_____

DIXIE DRUMMOND, MAYOR

ATTEST:

_____

CAROL ANN HOGUE, CITY CLERK