

ORDINANCE NO. 557

An Ordinance of the City of Lovington, New Mexico, amending Title 2 Administration and Personnel, Division V – Boards and Commissions, Chapter 2.72 Planning and Zoning Commission; amending Title 17 Zoning, Chapter 17.20 “A” Single-Family Dwelling District; amending Title 17 Zoning, Chapter 17.40 Nonconforming Uses.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 2, DIVISION V, CHAPTER 2.72, IN THE FOLLOWING FORM, IS HEREBY AMENDED:

- 2.72.010 Offices may be combined.
- 2.72.020 **Planning and** Zoning commission-Created.
- 2.72.030 Membership.
- 2.72.040 Reports and recommendations-Time limit.
- 2.72.050 Duties.
- 2.72.060 Recommendations for improvements.
- 2.72.070 Annual report.
- ~~2.72.080 Planning commission-Created.~~
- ~~2.72.090 Planning commission-Membership.~~

**2.72.010 Offices may be combined.**

The mayor may appoint the present members of the planning commission as members of the zoning commission and their terms and offices shall be identical to the terms and offices now held by them in the planning commission. Upon such appointment of the members of the planning commission, the commission shall be known as the city planning and zoning commission. (Prior code § 3-5-1)

**2.72.020 **Planning and** Zoning commission – Created.**

There is created a **planning and** zoning commission for the city **and it shall have all the powers, duties, authority and jurisdiction conferred by Sections 3-19-1 through 3-19-12, 3-20-2 through 3-20-15, and 3-21-1 thru 3-21-2, N.M.S.A., 1978.**

**2.72.030 Membership**

~~If the mayor and the city commission shall deem it to be to the best interest of the city to appoint a separate zoning commission, then such zoning commission shall consist of seven members and a chairman who shall be appointed by the mayor and confirmed by the city commission. The city engineer and the city attorney shall be ex officio members of the zoning commission. Three members of the commission first appointed under this chapter shall be appointed for a two year term and the remaining four members shall be appointed for a one~~

year term. The term of office thereafter shall be for two years. The zoning commission shall meet at such times as may be determined by it and also meetings of the commission may be held upon call of the chairman or of any three members thereof. The city clerk shall act as secretary of the zoning commission until provisions to the contrary shall be made by the zoning commission. (Prior code § 3-5-3)

The planning and zoning commission shall consist of seven members who shall own real property within the city or reside within a five-mile radius of the corporate boundaries of Lovington. They shall be appointed by the mayor and with the consent of the city commission. The term of each appointment shall be for two years. The city manager, fire chief, planning and zoning coordinator, and the city attorney shall be ex officio members of the planning and zoning commission without the right to vote.

#### **2.72.040 Reports and recommendations – Time limit.**

Whenever any plan, proposal or ordinance relating to matters coming within the duties or jurisdiction of the city **planning and zoning commission**, as set forth in this chapter or hereafter adopted, shall have been referred to the city **planning and zoning commission** for construction or advice, the city **planning and zoning commission** shall return the same to the city commission with its report and recommendation in writing within thirty days after such plans, proposals or ordinances shall have been referred to the city **planning and zoning commission**, unless the city commission shall, in referring such, direct that a longer or shorter period shall be allowed for such report. Upon the request or recommendation of the city **planning and zoning commission**, the time for the making of such report and recommendation may be extended within the discretion of the city commission.

When any plan, proposal or ordinance shall have been referred by the city commission to the city **planning and zoning commission**, the city shall not take action thereon until the expiration of the time allowed for the report and recommendation of the **planning and zoning commission**. (Prior code § 3-5-4)

#### **2.72.050 Duties**

The **planning and zoning commission** shall study the zoning questions in the city and shall prepare a report and suggest ordinances for regulation of the height of buildings and structures, setback lines or building lines, the intensity of the use of lot areas, location of trades and industries and buildings designed for industrial, business, residential or other uses and for dividing the city into various uses, heights and other districts for the purpose of establishing and enforcing adequate and proper zoning regulations. It shall be the duty of the city **planning and zoning commission** to formulate general plans and designs to promote the welfare, beauty and comfort of the city and to improve and develop means of transportation, ornamentation, drainage, sewerage and all other means of municipal improvements. The **planning and zoning commission** shall submit to the city commission reports, maps and plans for such purposes.

The **planning and zoning commission** shall have the authority to approve or deny conditional approval for non-conforming structures.

#### **2.72.060 Recommendations for improvements.**

- A. It shall be the duty of the city **planning and** zoning commission to keep itself informed as to the progress of city planning in this and other communities, and to make studies and recommendations for the improvement of sanitation, recreation, and general welfare of the public and to improve traffic transportation and the general convenience of the public. The city **planning and** zoning commission shall submit to the city commission plans, reports and recommendations concerning the development of facilities for public recreation, the development and improvement of public parks, boulevards, highways and other grounds and the extension and opening of streets and highways.
- B. It shall be the duty of the city **planning and** zoning commission to formulate and submit to the city commission, reports and plans for dividing the municipality into districts of such numbers, shape, area and form as may be deemed best, and submit reports and plans regulating or restricting the erection, construction, reconstruction, alteration, repair or use of buildings, structures or lands within such districts.
- C. It shall be the duty of the **planning and** city zoning commission to submit to the city commission reports, plans and recommendations to regulate and restrict the height, number of stories and size of buildings and other structures, percentages of lots that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and lands for trade, industry, residences or other purposes. (Prior code § 3-5-6)

#### **2.72.070 Annual report.**

On or before the fifteenth day of March of each year, the **planning and** zoning commission shall make a written report to the mayor and city commission of the work of the **planning and** zoning commission during the preceding year. Such report shall summarize all recommendations made by the **planning and** zoning commission to the city commission during the year and all references by the city commission to the **planning and** zoning commission of matters for investigation, report or advice, together with the action of the city commission, if any, taken thereon. Such report shall contain the general program of improvements for the city as shall be recommended by the **planning and** zoning commission and may contain estimates of cost and recommendations as to the means of defraying such. (Prior code § 3-5-7)

#### ~~**2.72.080 Planning commission—Created.**~~

~~There is created a commission to be known as "Lovington planning commission" and it shall have all the powers, duties, authority and jurisdiction conferred by Sections 3-19-1 through 3-19-12 and 3-20-2 through 3-20-15 N.M.S.A., 1978. (Amended during 1992 codification: prior code § 3-5-8)~~

## **2.72.090 — Planning commission — Membership**

The planning commission shall consist of seven members who shall own real property within the city or reside within a five-mile radius of the corporate boundaries of Lovington. They shall be appointed by the mayor and with the consent of the city commission. The term of each appointment shall be for two years except when the planning commission under this chapter is first appointed, four shall be for two years and three for one year. Thereafter, appointments shall be for two years except to fill a vacancy. The city manager, fire chief, city engineer and the city attorney shall be ex officio members of the planning commission without the right to vote. (Ord. 511, 2013; Prior code § 3-5-9)

### **FURTHERMORE**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 17, CHAPTER 17.20, IN THE FOLLOWING FORM, IS HEREBY AMENDED:**

#### **17.20.040 Front yard requirements – Carport**

- A. There shall be a front yard having a depth of not less than twenty-five feet **from the property line, to include dedicated public right-of-ways and easements**, unless forty percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than ten feet in which case no building shall project beyond the average front yard so established, but this regulation shall not be interpreted to require a front yard of more than thirty-five feet. Where lots have double frontage, the required front yard shall be provided on both streets.
- B. A carport no larger than seven hundred twenty square feet may be added ~~and attached to the structure~~, but only if it meets the following:
  - ~~1. It must attach to a permanent building.~~
  - ~~2. It must match or conform to the permanent building in materials, character and design.~~
  - ~~3.~~ **1.** It must not have walls or doors interfering with vision.
  - ~~4.~~ **2.** It must have its roof supported in conformance with the state building code as modified from time to time.
  - ~~5.~~ **3.** It must be constructed of metal, ~~or wood~~ **or concrete** of such design and size as to adequately and safely support the structure. ~~and shall conform to the design and materials of which it is attached.~~ **In no event shall it contain plastic materials.**

- ~~6.~~ 4. Ingress and egress must be assured by a concrete driveway the width of the carport.
- ~~7.~~ 5. The front yard must be a depth of at least five feet **from the property line, to include dedicated public right-of-ways and easements** before reaching the area immediately below the roof of the carport.

#### **17.20.050 Side yard requirements – Carport**

- A. There shall be a side yard on each side of the one story portions of buildings having a" width of not less than five feet **from the property line, to include dedicated public right-of-ways and easements** and a side yard on each side of the two story portions of buildings having a width of not less than seven and one half feet **from the property line, to include dedicated public right-of-ways and easements**. The side yard on the street side of a corner lot shall not be less than fifteen feet **from the property line, to include dedicated public right-of-ways and easements**, except as to lots of record as of August 9, 1960. The side yard line in regard to such lots of record shall be that which has been established by usage, but in no case less than five feet **from the property line, to include dedicated public right-of-ways and easements**.
- B. A carport shall be allowed if it meets the following:
  - ~~1.~~ ~~It must attach to a permanent building.~~
  - ~~2.~~ ~~It must match or conform to the permanent building in materials, character and design but in no event shall it contain plastic materials.~~ 1. **It must be constructed of metal, wood or concrete of such design and size as to adequately and safely support the structure. In no event shall it contain plastic materials.**
  - ~~3.~~ 2. It must not have walls or doors interfering with vision.
  - ~~4.~~ 3. It must have its roof supported in conformance with the state building code as modified from time to time.
  - ~~5.~~ 4. Ingress and egress must be assured by a concrete driveway the width of the car port.
  - ~~6.~~ 5. The side yard must be a width of at least five feet **from the property line, to include dedicated public right-of-ways and easements** before reaching the point immediately below the roof line of the carport.

**17.20.060 Rear yard requirements – Carports**

- A. There shall be a rear yard having a depth of not less than thirty feet or twenty percent of the depth of the lots, whichever amount is smaller.
  
- B. A carport shall be allowed if it meets the following:
  - ~~1. It must attach to a permanent building.~~
  
  - ~~2. It must match or conform to the permanent building in materials, character and design.~~ **1. It must be constructed of metal, wood or concrete of such design and size as to adequately and safely support the structure. In no event shall it contain plastic materials.**
  
  - ~~3.~~ **2.** It must not have walls or doors interfering with vision.
  
  - ~~4.~~ **3.** It must have its roof supported in conformance with the state building code as modified from time to time.
  
  - ~~5.~~ **4.** Ingress and egress must be assured by a concrete driveway the width of the carport.

**FURTHERMORE**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 17, CHAPTER 17.40, IN THE FOLLOWING FORM, IS HEREBY AMENDED:**

- 17.40.010 Land not containing buildings**
  
- 17.40.020 Preexisting use – Change in non - conforming status**
  
- 17.40.030 Restoration and alterations**
  
- 17.40.040 Discontinuance**
  
- 17.40.050 Special permits – Authority of city commission**
  
- 17.40.060 Conditional approval of non-conforming structures**
  
- 17.40.070 Appeals**
  
- 17.40.080 Violation**

#### **17.40.010 Land not containing buildings**

The lawful use of land containing no buildings which does not conform to the provisions of this title shall be discontinued within five years from February 12, 1971, the date of the approval of the ordinance codified in this section, and the use of land which becomes nonconforming by reason of a subsequent change in this title shall also be discontinued within five years from the date of the change. (Prior code § 11-3-5 (a))

#### **17.40.020 Preexisting use – Change in non-conforming status**

The lawful use of a building or trailer court existing on or before February 12, 1971, may be continued, although such use does not conform with the provisions of this title, and such use may be extended throughout the building or trailer court; provided, no structural alterations, except those required by law or ordinance are made therein. If no structural alterations are made, a nonconforming use of a building or trailer court may be changed to another nonconforming use of the same or more restricted classification. The foregoing provisions shall also apply to nonconforming uses in districts hereafter changed. Whenever a nonconforming use of a building or trailer court has been changed to a more restricted use or to a conforming use, such use shall not be thereafter changed to a less restricted use. (Prior code § 11-3-5 (b))

#### **17.40.030 Restoration and alterations**

- A. No building which has been damaged **or destroyed** by fire, explosion, act of God, or the public enemy, **any means** to the extent of more than fifty percent of its value, **replacement cost at time of damage or destruction** shall be restored except in conformity with the **most current** regulations of this title.
- B. No existing building or premises devoted to a use not permitted by this title in the district in which such building or premises is located, except when required to do so by law or ordinance, shall be enlarged, extended, reconstructed or structurally altered, unless such use is changed to one permitted **by the most current version of this title** in the district in which such building or premises is located. (Prior code § 11-3-5 (c, e))

#### **17.40.040 Discontinuance**

In the event that a nonconforming use of any building or premises is discontinued for a period of two years, the use of the same shall thereafter conform to the use permitted in the district in which it is located **according to the most current version of this title**. (Prior code § 11-3-5 (d))

#### **17.40.050 Special permits – Authority of city commission**

- A. The city commission may, by special permit after publication hearing and subject to such protective restrictions that it deems necessary, authorize the location of any of the following buildings or uses in any district from which they are prohibited by this title:

1. Any public building erected and used by any department of the city, county, state or federal government;
2. Hospitals, clinics and institutions for criminals and those for persons that are insane or have contagious diseases; provided, however, that such buildings may occupy not over twenty-five percent of the total area of the lot and will not have any serious and depreciating effect upon the value of the surrounding property; and provided further, that the buildings shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
3. Cemetery;
4. Community building or recreation field;
5. Airport or landing field;
6. Commercial greenhouses; provided, that any such structures shall not be less than one hundred feet from all property lines;
7. Temporary commercial amusements or recreational development;
8. Extraction of gravel, sand or other raw materials;
9. Industrial uses excluded from the "D" industrial district to locate in the "D" industrial district;
10. Parking lots adjacent to, across a street from or across an alley from a "C" commercial district, a "D" industrial district.
11. Any use not specifically identified in this section may be considered for approval, provided it meets any conditions stipulated in this title or by the Commissions, and is not detrimental to the public welfare, safety, health, morals and convenience of the surrounding area.

~~B. Before issuance of any special permit for any of the above buildings or uses, the city commission shall refer the proposed application to the city planning and zoning commission, which commission shall be given thirty days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general welfare. No action shall be taken upon any application for a proposed building or use above referred to until, and unless the report of the city planning and zoning commission has been filed; provided, however, that if no report is received from the city planning and zoning commission within thirty days, it shall be assumed that~~

~~approval of the application has been given by the commission. (Prior code § 11-3-5)~~ The following findings shall be made for approval of a special permit:

1. The use is consistent with the policies and recommendations adopted by the City Comprehensive Plan.
  2. The use will not have significant adverse effect on the character and value of adjacent properties or surrounding neighborhood.
  3. The use will not create a hazard, a public nuisance or be injurious to individuals or to the public.
  4. The use will not cause noise which is excessive for the particular area.
  5. The use will not have significant adverse effects on the natural environment and attractiveness of an area.
  6. The use will not be contrary to the public interest.
  7. The applicant will be able to meet any particular requirements specified for such a use in Land Development Standards and any additional conditions that the commission may impose.
  8. The applicant will be able to meet all requirements imposed by applicable state and federal laws and regulations.
  9. The special permit is non-transferable in the event that the specific use that was granted has changed or the property changes ownership.
- C. A \$150.00 filing and processing fee shall be paid to the City.
- D. Before issuance of any special permit for any of the above buildings or uses, the Planning and Zoning commission shall provide a review of the application submitted to the Planning and Zoning Department. Recommendation for approval or denial of the special permit shall be provided to the City Commission. The City Commission will provide final approval or denial of the special permit.
- E. If a special permit is granted, the permit shall be publicly displayed in a prominent on-site location.

**17.40.060 Conditional approval of non-conforming structures**

1. Structures that were built or installed prior to February 13, 2014 that do not conform to City zoning code will be allowed to remain in place so long as the following conditions are met:
  - A. Structure does not constitute an immediate threat to health or safety.
  - B. No negative impact on economic conditions or quality of life.
  - C. The proposed structure(s) fall within the setback requirements established in the zone it is located in.

- i. If the proposed structure(s) does not meet conditions set forth in B or C, the property owner will be required to apply for conditional approval through the Planning and Zoning Commission.
- ii. If the conditional approval is granted, a document will be filed at the Lea County Courthouse which will state approval of the non-conforming structure

2. Conditional approval of non-conforming structures process will be as follows:

- A. Property owner will complete the most current version of the City Planning and Zoning Application and Conditional Approval of Non-Conforming Structure Request.
- B. Pay a \$150.00 filing and processing.
- C. Notice of the conditional approval request will be posted by the owner on the site of the property where the structure(s) is located fifteen days from the date of the public hearing.
- D. Notice of the conditional approval request and the date and time of the Planning and Zoning Commission public meeting will be provided by City Staff to the owners of property located within 100 feet of the site by certified mail fifteen days prior to the date of the public hearing.
- E. The Planning and Zoning Commission will conduct a public hearing to determine the approval or denial of the conditional approval request.
- F. If approval is granted, the approval document will contain language that specifies the non-conforming structure may remain in place and indicate the reason(s) why the structure is considered to be in non-conformance.
  - i. In the event the non-conforming structure(s) is in conflict with setback requirements and is adjacent to public right of way(s) or easement(s), documentation will include the binding requirement that modification of the structure(s) to bring it into setback conformance or removal of the non-conforming structure(s), at owners expense, will be required in the event that installation, replacement, construction, or repair of any municipal infrastructure or utilities permitted through franchise agreement(s) with the City of Lovington.
  - ii. If property owner refused to comply with modifying the structure(s) to bring into conformance or remove non-conforming structure(s) for the aforementioned reason(s), the following actions will occur:

1. The approval of the non-conforming structure(s) will be revoked.
2. The non-conforming structures(s) will be removed. The costs associated with the removal of the structure(s), plus any other penalties or costs allowed by law in connection therewith shall be billed to the owner of record, who shall have fifteen days to submit payment in full. Failure to remit shall cause a lien to be placed upon the property from which such structure(s) were removed in the manner prescribed by law.

G. In the event of sale or transfer of ownership the conditional approval of a non-conforming structure, if granted, is transferable. The same conditions and restrictions will remain in place.

**17.40.070 Appeals**

All appeals shall follow regulations set forth in 17.08.040.

**17.40.080 Violation**

Any person, firm, company, or corporation violating any of the provisions of this title in this Code, or in any ordinance or resolution of the City rule, regulation or order promulgated by any officer or agency of the City under authority duly vested in him/her or it, any act is prohibited or is declared unlawful or a misdemeanor or an offense. The violation of any such provision of this code or any ordinance, rule regulation or order shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) ~~and by imprisonment in the county jail, for a term of not more than ninety (90) days or by both said fine and imprisonment.~~ Each day any violation of this Code or any such ordinance, resolution, rule, regulation shall constitute as a separate offense.