

## ORDINANCE NO. 569

### AN ORDINANCE OF THE CITY OF LOVINGTON, NEW MEXICO CREATING TITLE 17 – ZONING, CHAPTER 17.34 – “E” ECONOMIC DISTRICT

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 17,  
CHAPTER 17.34 BE AND HEREBY IS CREATED AS FOLLOWS:

#### **17.34.010 Regulations – In general.**

The regulations set forth in this chapter, or set forth elsewhere in this title and referred to in this chapter are the regulations in the "E" economic district.

#### **17.34.020 Purpose**

To promote, as a matter of public policy, the preservation, protection, and enhancement of those buildings, properties, structures, sites, and incidental appurtenances used for commercial purposes that generate gross receipt tax revenue for the City of Lovington in the area described as:

- a. Main Street beginning at Avenue R and ending at Love Street, bounded on the East by the east edge of the alley easement between Main Street and Love Street and bounded on the West by the west edge of the alley between Main Street and 1<sup>st</sup> Street. For properties that do not have an alley built or platted, the boundary will be assumed as the number of feet from the public right of way to the alley that would exist if it were platted or built;
- b. Avenue D beginning at 17<sup>th</sup> Street and ending at Commercial Street, bounded on the North by the northern edge of the alley easement between Avenue D and Avenue C and bounded on the South by the southern edge of the alley easement between Avenue D and Avenue C. For properties that do not have an alley built or platted, the boundary will be assumed as the number of feet from the public right of way to the alley that would exist if it were platted or built;
- c. In the event the property within the district is subdivided, zoning may not be changed.

This district is created in the interest or prosperity, civic pride, and general welfare of the City of Lovington and to prevent urban blight by:

- a. Providing a mechanism to preserve, protect, enhance, and perpetuate those structures, properties, sites, buildings, and incidental appurtenances used for commercial purposes in designated areas;
- b. Fostering civic pride and respect in the community's future;
- c. Maintaining and improving property values;
- d. Protecting and enhancing the community's attraction to tourists and visitors;

- e. Promoting the structures, property sites, buildings, and incidental appurtenances for the general welfare of the community; and
- f. Fostering and encouraging preservation, restoration, and rehabilitation of structures, properties, buildings, sites, and incidental appurtenances thereby preventing urban blight; and
- g. Increase municipal revenues that will be used for the operation, repair, maintenance, and improvement of the community.

### **17.34.030 Definitions**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Alteration:** Any act or process that changes one or more of the exterior features of a structure through the erection, construction, reconstruction, paint, or painting a part thereof.

**Building:** Any structure with walls or roof, site, or property used for commercial purposes within the designated area as set forth in this chapter.

**District:** The area described in 17.34.020

**Repair:** An applied coating of paint or stain to the exterior of a structure, or upkeep of any stucco, sheetrock, wood exterior, stone, rock, glass, or other exterior covering of a building, site, property, or structure; and/or any change that is not construction, removal, or alteration.

**Structure, site, building, property, or incidental appurtenances:** Anything already constructed, to be constructed or erected, in the designated area referenced in this chapter that use of which requires permanent or temporary location on or in the ground, including, without limiting the generality of the foregoing, buildings, fences, gazebos, signs, radio and television antennas, including supporting towers, and any other structure or building that would normally be allowed in a Commercial Zone.

**Urban Nuisance:**

- A. Any structure, property, building, site, or incidental appurtenance which is not properly maintained. Maintenance requirements are listed in 17.34.120.
- B. Any structure, property, building, site, or incidental appurtenance to exist, which, because of the condition of the exterior, invites vandalism, graffiti, damage to the building, unlawful entry by persons not otherwise authorized to be present in the area, affects the overall structural maintenance of the structure, property, building, and site, in a manner as to allow rodents or other vermin to infest the area, or which in any manner affects the public's health or safety, in general, or as regards the immediate property owner or adjoining property owners.

**17.34.040 Permitted uses.**

A building or premises shall be used for the following purposes:

- A. Municipal owned or operated parks and playgrounds
- B. Government owned or operated offices, buildings, or facilities
- C. Churches
- D. Multiple dwelling, containing a minimum floor space based on the following criteria:
  - a. Studio apartment – 400 ft<sup>2</sup>
  - b. 1-bedroom apartment – 575 ft<sup>2</sup>
  - c. 2-bedroom apartment – 775 ft<sup>2</sup>
  - d. 3-bedroom apartment – 950 ft<sup>2</sup>
- E. Professional offices
- F. Hospitals and clinics
- G. Hotels or motels
- H. Retail businesses or facilities that generate gross receipts tax revenues for the City

**17.34.050 Prohibited uses**

A building or premises may be used for any other purpose except the following:

- 1. Prohibited uses listed in Zones A, B, and C
- 2. Recreational vehicle and manufactured home parks
- 3. Single family dwelling
  - a. Single family dwellings located within the district that were constructed prior to January 1, 2019 may continue to be used as a residence so long as they comply with the maintenance and security requirements specified in this Chapter.
  - b. If a single-family dwelling is converted to be utilized for any use that is permitted in 17.34.040 before or after the effective date of this Chapter it may not be reverted back to a residential use.
- 4. Mobile homes or manufactured homes
- 5. Truck parking lots with the exception to accommodate for truck parking so long as the operator or driver is conducting business at the site of the parking area.
- 6. Buildings repurposed for storage
- 7. It is unlawful for any person to park a tractor trailer rig, freight trailer, bus, hazardous cargo vehicle, a vehicle with a manufacturer's gross vehicle weight rating (GVWR) of more than fifteen thousand pounds on streets, alleys, public right of ways and easements, or upon property located within the zone.
  - a. Parking of delivery vehicles that are utilized by the company to deliver goods and services provided that are originating from the business location at which the vehicle is parked or stored.

- b. Customer vehicles, as described, being stored at the site of a mechanics shop or garage are allowed
- c. Parking of these vehicles for loading and unloading purposes is allowable.

**17.34.060 Parking regulations.**

- A. New commercial buildings shall provide permanent space on the lot in the ratio of one parking space for each eight hundred square feet of floor space in the building; provided, however, that two or more establishments may provide necessary parking space upon a single parcel of land within three hundred feet of the establishment. New commercial buildings must provide for handicap access and parking as required by the Americans with Disability Act.

**17.34.070 Height restrictions.**

No building shall exceed seven stories or seventy feet in height.

**17.34.080 Front yard.**

Where all the frontage on one side of a street between two intersecting streets is located in the "E" economic district, no front yard shall be required. Where the frontage on one side of the street between two intersecting streets is located partly in the "E" economic district and partly in a dwelling district, the front yard requirements of the dwelling district shall apply to the "E" economic district.

**17.34.090 Side yard.**

The side yard regulations for allowable dwellings per this chapter are the same as those in the "B" multiple dwelling districts. In all other cases, a side yard is not required except:

- A. On the side of a lot adjoining a dwelling district, in which case there shall be a side yard of not less than five feet; provided, however that if a side yard is provided where not required, it shall not be less than two and one-half feet in width;
- B. On the street side of a corner lot that rears upon a dwelling district, in which case, there shall be a side yard of not less than five feet.

**17.34.100 Rear yard.**

- A. Where the lot abuts an alley, no rear yard shall be required for one story buildings.
- B. Where the lot abuts an alley, a rear yard of ten feet shall be provided for the two-story parts of buildings.

- C. Where the lot does not abut an alley, there shall be a rear yard having a depth of not less than twenty feet, unless the lot is a lot of record on or before February 12, 1971 and is less than one hundred feet in depth, in which case, the rear yard need not exceed twenty per cent of the depth of the lot.

**17.34.110 Interior courts.**

All interior courts shall have a width equal to at least the height of the highest part of the building forming the court.

**17.34.120 Maintenance requirements.**

1. Generally, the appearance and condition of the building or structure shall be maintained to present a safe and attractive streetscape to passersby.
2. A maximum of 10% of exterior facade may exhibit peeling paint, damaged stucco, or other deteriorated exterior visible surfaces.
3. The exteriors of the properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, an accumulation of newspapers, circulars, flyers, notices, except those required by federal, state, or city law, discarded personal items, including, but not limited to, furniture, clothing, large and small appliances, printed material, vehicles, vessels and trailers and/or any other items that give the appearance that the property is abandoned or solely used for storage purposes.
4. The exteriors of the property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the exterior color of the structure. Properly maintained murals of non-offensive nature, may be permitted through the approval of the City Commission.
5. Maintenance shall include, but shall not be limited to, watering, cutting, and mowing of required landscape and removal of yard waste.
6. A structure shall not have windows that are not weathertight and/or window frames with more than fifty (50) percent of the surface area covered with disfigured, cracked, or peeling surface materials for a period of more than sixty (60) consecutive days.
7. In the case of boarded up windows and/or doors, in all cases the plywood or other covering shall be cut to precisely fit inside the entire window frame and not merely tacked over the approximate location of the wall opening.

- a. The covering shall be painted a dark ashen grey or black to simulate a typical exterior window color or by some other color in keeping with the building facade. These standards shall apply to the front and in the case of corner structures, the side facing the avenue also. Alley exposures shall be exempt from the paint requirement.
  - b. The remainder of the building surface shall present a neat, attractive, well maintained appearance, and present a base color and complimentary trim color in addition to the color of the window-covering(s).
  - c. Utilizing boards or other materials such as metal to secure broken windows or doors may only be used for no longer than 30 days after which time the windows and/or doors must be repaired.
  - d. Permanent repairs shall be done in such a way that will complement the structures appearance. Shuttering or enclosing material's, which are not glass, should be painted to compliment the building appearance.
  - e. All repairs should be done with the intention of improving the appearance of the existing structure, site, or property within the City.
8. A structure shall not have awnings with more than thirty (30) percent of the surface area, torn, tattered, or missing for a period of more than thirty (30) consecutive days.
  9. Structural damage due to insects (termites or other wood boring pests) where infestation affects structural components of any structural element (i.e., roof, floor joists, etc.) shall not be permitted for a period of more than sixty (60) days.
  10. The roof shall be maintained so that roof leaks do not threaten interior electrical components, interior contents, or create damp interior conditions as to promote mold, mildew, nor threaten adjacent structures, to include the host structure itself.
  11. Properties being utilized for commercial purposes shall maintain parking lots and parking lot entrances. Parking lots and parking lot entrances, to include the curb and gutter bordering the property, shall be maintained and repairs with the material of which it is primarily constructed.
  12. A building, property, site, structure, or incidental appurtenance that because of its state of disrepair is such that could reasonably cause injury, damage, harm, or inconvenience to a considerable portion of the community in the use and enjoyment of property, materially interfering with the proper use or comfort and enjoyment of surrounding property, taking into consideration the nature and use of the properties in the area and the character of the community in which they are situated, which condition would be substantially offensive and annoying to persons of ordinary sensibilities, tastes, and habits living in the community.

**17.34.130 Security Requirements**

1. Properties subject to this ordinance shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
2. A secure manner shall include, but shall not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows and other openings shall be secured as applicable by reglazing or temporary boarding of the windows, doors, or other openings until permanent repairs are accomplished.
3. If the property is owned by an individual, mortgagee, or corporation that is located outside of the City, it shall be required that a local point of contact is registered with the City. This point of contact must be updated with the City Clerk annually. The local point of contact shall have the ability to perform monthly inspections of the property to verify compliance with the requirements of this ordinance and have the authority to receive all written correspondence and notices in regards to the property. Upon the request of the city, the point of contact shall provide a copy of the inspection report(s) to the City Manager or their designee.

**17.34.140 Additional requirements**

The City Manager, or their designee, shall have authority to require the mortgagee or owner of record of any property affected by this chapter to implement additional maintenance and/or security measures, including, but not limited to, securing any and all door, window or other openings, or other measures as may be reasonably required to help prevent further decline of the property.

**17.34.150 Prohibition**

It shall be unlawful for any person, corporation, or entity to cause, permit, or maintain a building in need of exterior repair as above set forth.

**17.34.160 Notice; abatement; hearing**

- a. Whenever an urban nuisance is found to exist within the identified district as defined by this chapter, the City Manager or their designee shall give written or published notice to the owner, his or her agent, lessee or occupant of the property upon which the urban nuisance exists, or upon the person causing or maintaining the urban nuisance; provided, however, that failure of the City Manager or their designee to give notice shall not constitute a defense to any action brought to enforce this action.
- b. Every person, including the owner, his or her agent, tenant, lessee, or occupant of the property where the urban nuisance exists, shall abate any urban nuisance by the correction or removal of the urban nuisance within 10 days of being given notice as herein above set forth in division (a.) above, or by entering into a written agreement

with the city for the correction or removal of the urban nuisance within the 10-day period.

- c. If an agreement is entered into within the 10-day period, the time limits of this section shall be stayed.
- d. If the person so cited disagrees with the decision made by the City Manager or their designee, that person shall have the right to request a hearing before the governing body of the City of Lovington within a 10-day period after the rendering of a decision in writing by the City Manager or their designee.
  - 1. If a request for hearing is made within the 10-day period, the time limits of this section shall be stayed pending a decision by the governing body of the City of Lovington.

**17.34.170      Contents of Notice**

The notice to abate an urban nuisance issued under the provisions of this chapter shall contain:

- a. An order to abate the urban nuisance or to request a hearing before the governing body of the City within the ten days after written or published notice;
- b. The location of the urban nuisance, if the same is stationary;
- c. A description of what constitutes the urban nuisance; and
- d. A statement that if the urban nuisance is not abated as directed and, if no request for hearing is made within the prescribed time, the city may abate the urban nuisance and assess the costs thereof against the person, or take any other action as allowed in this chapter.

**17.34.180      Service of Notice**

A notice to abate an urban nuisance issued under the provisions of this chapter shall be served as any other legal process may be served pursuant to law.

**17.34.190      Abatement by City**

Upon the failure of the person upon whom notice to abate an urban nuisance was served pursuant to the provisions of this chapter to abate the same, the designated officer of the City may proceed to abate the urban nuisance and shall prepare a statement of costs incurred in the abatement thereof.



**17.34.200 City's costs declared lien**

- a. Any and all costs incurred by the city in the abatement of an urban nuisance under the provisions of this chapter shall constitute a lien against the property upon which the urban nuisance existed, which lien shall be filed, proven, and collected as provided by law.
- b. The lien shall be notice to all persons from the time of its recording and shall bear interest at the legal rate thereafter until satisfied.

**17.34.210 Penalty**

- a. Whenever in this chapter an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this chapter the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, the violation of any provision or the failure to perform any act shall be punishable by a fine not to exceed \$500.
- b. Each day any violation or failure to perform the act shall continue shall constitute a separate offense and is a separate violation of an ordinance of this city, unless otherwise specifically provided.

**17.34.220 Effective Date**

This chapter shall become effective thirty days after the date of enactment by the governing body of the City of Lovington, as to those properties, sites, buildings, structures, or incidental appurtenances already in existence at the time of adoption, and as to all others who shall construct, or cause to be erected, any structure on or in the ground after the enactment of the chapter immediately.