

**CITY OF LOVINGTON**  
**REGULAR MEETING OF PLANNING AND ZONING COMMISSION**  
TUESDAY, NOVEMBER 14, 2017 4:00 P.M.  
TO BE HELD AT 214 SOUTH LOVE STREET

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**AGENDA**

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Notice of this meeting has been given to the public in compliance with Section 10-15-4 NMSA 1978

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**OPEN MEETING**

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Call To Order

Approval of Agenda

Consideration of the Joint Work Session Meeting Minutes on October 10, 2017

**PUBLIC COMMENT**

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**NON ACTION ITEMS**

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Discussion of non-conforming structures or land uses

**ACTION ITEMS**

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Consider recommendation for 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

**OTHER COMMENT**

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**ADJOURNMENT**

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If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the City Clerk at 575-396-2884 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk at 575-396-2884 if a summary or other type of accessible format is needed.

NOTICE OF POTENTIAL QUORUM

Notice is hereby given that a quorum of the Lovington City Commission may attend this meeting. No policy will be formulated by the members of the Commission and the members of the Commission will take no official vote or other action. The purpose of this notice is to merely inform the public that the Lovington City Commission may attend this meeting.

**JOINT MEETING OF THE CITY COMMISSION and PLANNING & ZONING COMMISSION  
TUESDAY OCTOBER 10, 2017 @5:30 P.M.  
HELD AT CITY COMMISSION CHAMBER, 214 SOUTH LOVE STREET**

**PURPOSE OF MEETING:**

- Discussions of non-conforming structures or land uses.

**PRESENT:** Vice Chairman Betty Price, Members Clint Laughrin, Joel Gomez, Dave Rowser, Ron Humphrey, Brenda Garcia, and Mayor Pro-tem David Trujillo, Commissioner Arthur Sanchez, Commissioner Bernard Butcher, and Commissioner Scotty Gandy.

**NON-PRESENT:** Chairman Randy Pettigrew, and Mayor Paul Campos

**ALSO PRESENT:** City Manager James Williams, City Attorney Samberson, Public Works Director Wyatt Duncan, Planning and Zoning Coordinator Crystal Ball, Fire Inspector Michael Ontiveros, and City Clerk Anna Juarez.

**CALL TO ORDER:** The meeting was called to order by Mayor Pro-tem Trujillo at 5:30 pm

**INVOCATION** Commissioner Gandy gave the invocation

**PLEDGE OF ALLEGIANCE** Commissioner Gandy led the Pledge of Allegiance

**APPROVAL OF AGENDA:** Mayor Pro-tem Trujillo called for a motion. Commissioner Gandy so moved to approve agenda as presented; Commissioner Sanchez seconded. Motion was approved.

**APPROVAL OF REGULAR MINUTES OF SEPTEMBER 12, 2017:** Mayor Pro-tem Trujillo called for a motion. Vice Chairman Price so moved to approve the regular meeting minutes of June 13, 2017 and August 15, 2017 as presented. Member Rowser seconded. Motion was approved.

**PUBLIC COMMENT:** Paula VanCleve stated that citizens' opinion on non-conforming structures is that she wants to find a way to keep what people already have, like carports and storage buildings.

Marla Price gave examples of non-conforming locations in the area and asked what the plan is to grandfather it, or tear down the structures, if not safe.

**NON-ACTION ITEMS:**

**Discussion of non-conforming structures or land uses:** City Manager Williams discussed City of Lovington Zoning Code. He informed members of issues with non-conforming structures and land uses, and informed members of potential options for these issues. There have been regulations regarding carports and structures for decades. He then proceeded to show a timeline of the zoning code. There was no permitting process prior to 2014. He discussed the potential solutions—catching future construction and educating the

public. He discussed state building permits, as a state building permit is required for structures. Anything prior to 2014 is the state of NM's responsibility. Setbacks are in place for safety, privacy, reduction of crowding, and infrastructure. He explained why they must be compliant and discussed solutions. There can be variances, with certain exceptions. He addressed non-conformance of existing structures and said non-conformity does violate the law and how to handle that. City Manager Williams did discuss a possible process for a conditional use permit which would be submitted to PZ Coordinator with an appropriate fee. He spoke of the possible process and the guidelines for approval. Possible solutions include permits with fees and grandfathering structures, all of which require a change in zone. He summarized noting that the law is the law; these are our options to follow or change otherwise change the law.

Commissioners and PZ Board Members discussed how the state should take care of the law, and not wait for the city to bring structures to their attention. City Manager Williams said they will address immediate threats of structures. The building permit is given by the state, but the City only has record of the applications. Commissioners and PZ Board Members agreed that sidewalks must be included when roads are rebuilt according to the Americans with Disabilities Act and any structure that interferes must be modified or removed at owners' expense. Commercially zoned areas must also be in compliance. Zone A LMC 17.20.040(B)(5) states that construction materials (carports) must be constructed of metal or wood of such design and size as to adequately and safely support the structure and conform to the design and materials of which it is attached. It has been mentioned as a possible solution that letters can be mailed to residents that notifies them of the law. With that knowledge, the residents may either take care of their structures immediately, or wait until the street is under review, at which point they must conform, both at their expense. PZ Coordination stated matching, conforming and attachment were the biggest issue for zoning. Commissioners and PZ Board Members, staff and public agreed the change of the language of the Zone A ordinance. The removal of the A zone code for "carports' attachment to permanent building and conforming to the permanent building in materials, character and design" would eliminate from half to three-quarters of the carport issues in the A zone. It was noted that the term "grandfathered" is understood and has guidelines, such as not obstructing sidewalks. The permit is needed when there is a violation of setback. There needs to be a paper trail so future owners of any property will not run into the problem of proving a structure was grandfathered. City Manager Williams summarized that conforming language would be changed and for all setbacks, as long as a structure is not directly impacting health or safety, the language would be changed that would grandfather structures that were built before the 2014 cutoff unless use of the right-of-way is needed by the City. There will be a onetime filing fee for the Conditional Use Permit as long as it is approved by the board. The Members discussed issues with non-conforming structures or land uses and potential options presented by City Manager Williams. City Manager Williams stated that a draft will be created for the November 14 meeting, to be presented to City Commission meeting November 27, and finalized possibly in December. This will not be advertised until they are satisfied code wording to save on mailing costs.

**ADJOURNMENT:** There being no further business, Meeting adjourned at 7:14 p.m.

**APPROVED:** \_\_\_\_\_  
**CHAIRMAN, RANDY PETTIGREW**

**ATTEST:** \_\_\_\_\_  
**VICE CHAIRMAN, BETTY PRICE**

CITY OF LOVINGTON  
PLANNING & ZONING COMMISSION  
STAFF SUMMARY FORM



MEETING DATE: November 14, 2017

ACTION ITEM

NON ACTION ITEM

**SUBJECT:** Discussion of non-conforming structures and uses  
**SUBMITTED BY:** Staff  
**DATE SUBMITTED:** November 6, 2017

**STAFF SUMMARY:**

Staff have reviewed the discussion that was held during the October 10, 2017 joint meeting between the City Commission and Planning and Zoning Commission in regards to non-conforming structures and uses. The proposed means to address these issues will require a change in City Code.

Staff have identified the areas of the City Code that will require an amendment in order to meet the changes that were discussed. The attached document does include the changes that were discussed.

Staff will review each section of the proposed changes during the discussion.

**ATTACHMENTS:**

Non-conformance Ordinance Draft for discussion purposes.

**RECOMMENDATION:**

Discussion only.

\_\_\_\_\_  
Planning and Zoning Coordinator

*James R. Williams*  
\_\_\_\_\_  
City Manager

ORDINANCE NO. \_\_\_\_\_

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:

**2.72.050 Duties**

The 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 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 commission shall submit to the city commission reports, maps and plans for such purposes. **The commission shall have the authority to approve or deny conditional approval for non-conforming structures.**

**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, 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 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 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. The side yard on the street side of a corner lot shall not be less than fifteen feet, 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.
- 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 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 car port.

**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:**

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| <b>17.40.010</b> | <b>Land not containing buildings</b>                       |
| <b>17.40.020</b> | <b>Preexisting use – Change in non - conforming status</b> |
| <b>17.40.030</b> | <b>Restoration and alterations</b>                         |
| <b>17.40.040</b> | <b>Discontinuance</b>                                      |
| <b>17.40.050</b> | <b>Special permits – Authority of city commission</b>      |
| <b>17.40.060</b> | <b>Conditional approval of non-conforming structures</b>   |

**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 ~~and~~ 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.

#### **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.

**CITY OF LOVINGTON**  
**PLANNING & ZONING COMMISSION**  
**STAFF SUMMARY FORM**



MEETING DATE: November 14, 2017

**ACTION ITEM**                       **NON ACTION ITEM**

**SUBJECT:** Recommendation for Ordinance: Non-conforming structures and uses  
**SUBMITTED BY:** Staff  
**DATE SUBMITTED:** November 6, 2017

***STAFF SUMMARY:***

The potential draft for the changes required to address the issue of non-conforming structures and uses was attached to the previous item. In the event that the Planning and Zoning Commission is satisfied with the document, even with modifications made during this meeting, a vote on recommending to the City Commission to start the Ordinance adoption process can occur.

Should this body vote to move forward, it will be a recommendation to the City Commission to start the process. The process would entail the following:

1. Discussion only of the proposed Ordinance by the City Commission
2. The first item for action to occur would be a Resolution that would authorize the advertisement of the proposed Ordinance. As this requires a change in the zoning portions of the municipal code, we are required to notify every owner of property within the affected zones of the proposed changes. This will be accomplished by 1st Class Mail to the owner of record. In addition, the legal notice would be published in the newspaper and posted to the City website. A notice of public meetings and summary of the ordinance would also be sent out in the City utility bills.
3. Once 30 days have elapsed, the Ordinance would be considered for adoption by the City, to take effect 15 days after final adoption. Between publication and final adoption, it is feasible to have discussion occur regarding this issue at regular City Commission meetings.

***ATTACHMENTS:***

***RECOMMENDATION:***

Motion to recommend approval of draft ordinance, with any changes submitted by the members of the Planning and Zoning Commission.

\_\_\_\_\_  
**Planning and Zoning Coordinator**

*James R. Williams*  
\_\_\_\_\_  
**City Manager**