



# City of Las Cruces®

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## Council Action and Executive Summary

Item # 13Ordinance/Resolution# 2687

For Meeting of July 15, 2013  
(Ordinance First Reading Date)

For Meeting of August 5, 2013  
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL

 LEGISLATIVE

 ADMINISTRATIVE

**TITLE:** AN ORDINANCE REPEALING AND REPLACING ARTICLE II, SECTION 38-49, AND SECTION 38-54, OF THE 2001 LAS CRUCES ZONING CODE, AS AMENDED FOR INCORPORATION OF NEW AND REVISED PROVISIONS RELATED TO PUBLIC NOTIFICATION. SUBMITTED BY THE CITY OF LAS CRUCES (CASE ZCA-13-01).

**PURPOSE(S) OF ACTION:**

Increase public notification requirements in the 2001 Las Cruces Zoning Code.

<b>COUNCIL DISTRICT:</b> All		
<b>Drafter/Staff Contact:</b> Vincent M. Banegas	<b>Department/Section:</b> Community Development/ Administration	<b>Phone:</b> 528-3064
<b>City Manager Signature:</b> 		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

During the first quarter of 2012, the Planning and Zoning Commission, along with the City Council, requested examination of and potential amendment to increase public notification requirements for planning and development related cases. In response to this request, two City Council work sessions were held on March 26 and September 24, 2012. After much discussion, consensus was reached on proposed amendments that will:

1. Make agenda posting, newspaper advertisement, property sign posting, neighborhood group notification and mail-out letter notification all a minimum 15 calendar day notification period.
2. Reduce certified mail for mail-out notice while increasing the use of standard first class mail; consistent with State Statues.
3. Increase the mail-out notification boundary from a 200 foot requirement to a new 500 foot standard.
4. Increase the notification boundary identified in the City's Neighborhood Association Information and Notification Policy from 200 feet to 500 feet, to also include other types of neighborhood groups.
5. Require development pre-application meetings for determination of need for earlier public notification.

6. Establish content for early notification letter and specifically require the extension of an opportunity to discuss the proposal to noticed group(s)/area residents.

As a follow-up to the consensus reached at City Council on these issues and the unanimous recommendation for approval by the Planning and Zoning Commission at their April 23, 2013 Regular Meeting, this CAES packet specifically identifies all related amendments and supporting material to the 2001 Las Cruces Zoning Code, as amended. Key documents contained herein include the proposed amendments for Council action identified as Exhibit "A." The same information in legislative format or "text change" format is part of the staff packet for the Planning and Zoning Commission meeting of April 23, 2013, listed as Attachment "A" for this CAES.

**SUPPORT INFORMATION:**

1. Ordinance.
2. Exhibit "A", Article II, Section 38-49, and Section 38-54 of the 2001 Las Cruces Zoning Code, as Amended.
3. Exhibit "B", Findings.
4. Attachment "A", April 23, 2013, Planning and Zoning Commission Staff Report for Case ZCA-13-01 (Zoning and Subdivision Codes in legislative format).
5. Attachment "B", Approved Minutes, April 23, 2013, Planning and Zoning Commission Regular Public Hearing.
6. Attachment "C", Approved Minutes, March 19, 2013 Planning and Zoning Commission Work Session.
7. Attachment "D", Packet and Minutes from September 24, 2012 City Council Work Session.
8. Attachment "E", Packet and Minutes from March 26, 2012 City Council Work Session.

**SOURCE OF FUNDING:**

Is this action already budgeted?    N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?  N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ ____ for FY ____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

<b>Fund Name(s)</b>	<b>Account Number(s)</b>	<b>Expenditure Proposed</b>	<b>Available Budgeted Funds in Current FY</b>	<b>Remaining Funds</b>	<b>Purpose for Remaining Funds</b>
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the proposed repeal and replacement of affected sections of the 2001 Las Cruces Zoning Code, as amended implementing a more robust public notification process.
2. Vote "No"; this will not approve the proposed repeal and replacement of affected sections of the 2001 Las Cruces Zoning Code, as amended, and will keep the existing provisions in place.
3. Vote to "Amend"; this could allow Council to modify the Ordinance as deemed appropriate. The Council could alter specific provisions for inclusion in an approval action.
4. Vote to "Table"; this could allow Council to table/postpone the Ordinance and direct staff accordingly.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A

**COUNCIL BILL NO.** 14-002  
**ORDINANCE NO.** 2687

**AN ORDINANCE REPEALING AND REPLACING ARTICLE II, SECTION 38-49, AND SECTION 38-54, OF THE 2001 LAS CRUCES ZONING CODE, AS AMENDED FOR INCORPORATION OF NEW AND REVISED PROVISIONS RELATED TO PUBLIC NOTIFICATION. SUBMITTED BY THE CITY OF LAS CRUCES (CASE ZCA-13-01).**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces is seeking to improve its public notification processes for planning and development related cases; and

**WHEREAS**, the City Council following two work sessions on March 26, 2012 and September 24, 2012, provided input and direction on how improvement can be achieved based on staff research and presentation of ideas; and

**WHEREAS**, the proposed changes increase opportunities for involvement on related cases through early notification and more direct involvement of neighborhood groups and/or residents of the noticed area; and

**WHEREAS**, the increased notice provisions place equitable responsibility on all stakeholders (City, applicant and neighborhood group/residents of noticed area) to the extent possible.

**NOW, THEREFORE**, Be it ordained by the governing body of the City of Las Cruces:

**(I)**

**THAT** changes outlined pursuant to Exhibit "A," attached hereto and made part of this Ordinance, are hereby approved.

**(II)**

**THAT** said action is based on the findings contained in Exhibit "B," attached hereto and made part of this Ordinance.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

- Mayor Miyagishima: \_\_\_\_\_
- Councillor Silva: \_\_\_\_\_
- Councillor Smith: \_\_\_\_\_
- Councillor Pedroza: \_\_\_\_\_
- Councillor Small: \_\_\_\_\_
- Councillor Sorg: \_\_\_\_\_
- Councillor Thomas: \_\_\_\_\_

**Exhibit 'A' (pt. 1)****ARTICLE II. ADMINISTRATION OF THE ZONING CODE****Sec. 38-10. Planning and Zoning Commission**

- A. CREATED. A Planning and Zoning Commission is created by the City Council with the adoption of this Code. The Planning and Zoning Commission shall review the planning, zoning and platting of the City, investigate any related problems and make recommendations to the City Council.
- B. DUTIES.
1. FINAL ACTION. The Planning and Zoning Commission shall take final action on the following:
    - a. All Special Use Permits, Master Plans (except as part of an annexation request), Subdivisions (except Alternate Summary Plats and Final Plats as defined in the City's Subdivision Code and subdivisions requesting three or more waivers to planning-related issues), and Final Site Plans of Planned Unit Developments (unless the Final Site Plan is submitted with the Concept Plan),
    - b. Within the Infill Areas, all Infill development proposals, and associated variances,
    - c. All variances on property whether stand alone or that require a Special Use Permit or where a Planned Unit Development is proposed,
    - d. All challenges to administrative decisions or interpretations of the Zoning Code, Sign Code, or Landscape provisions of the City Design Standards,
    - e. Appeals of design-related interpretation disagreements between the City staff and the University Avenue Corridor Citizens' Design Review Committee,
    - f. Appeals of City staff decisions on matters associated with the Avenida de Mesilla Gateway Overlay Zone District,
    - g. Appeals of City staff decisions on matters associated with the Lohman Avenue Overlay District, and
    - h. All matters submitted pursuant to Section 3-19-11 NMSA.

Any decision of the Planning and Zoning Commission may be appealed to the City Council in accord with Section 38-13.

## 2. RECOMMENDATION TO CITY COUNCIL.

- a. The Planning and Zoning Commission, with the assistance of City staff and interested persons, shall recommend the Comprehensive Plan to the City Council. In discharging this duty, the Commission shall consult with and coordinate the planning activities of departments and agencies of the City to assist in the development of the Comprehensive Plan. In its planning activities, the Commission shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The Commission shall periodically review the plan and recommend amendments whenever necessary. The Plan may be prepared and adopted in sections, each of which relates to a major subject of the Plan or to a major geographical section of the City. Before adopting the Comprehensive Plan or any section or amendment of the Plan, the Commission shall hold at least one public hearing. The Comprehensive Plan or any section thereof shall be adopted by a majority of all members of the Commission. A copy of the Plan or of any section or amendment thereof adopted by the Commission shall be sent to the City Council for consideration. Until adopted by the City Council, the Plan shall constitute only the recommendation of the Planning and Zoning Commission.
- b. The Planning and Zoning Commission shall recommend to the City Council approval, denial or modification of all requests for Zoning Code amendments, Sign Code amendments, zone changes, annexations (a master plan that is part of an annexation request), initial zonings, the Concept Plan (and Final Site Plans if submitted with the Concept Plan) of Planned Unit Developments, and associated variances. As noted in Sec. 38-10B.1.b, the Planning and Zoning Commission shall take final action on all requests regarding Infill Parcels.
- c. When the Planning and Zoning Commission recommends denial of any matter on which the City Council takes final action, an appeal to City Council is not required.
- d. Community Development Department staff may make a recommendation, if applicable, on any matter to come before the Planning and Zoning Commission.

## C. PRE-APPLICATION PROCEDURES.

1. Development Proposal- Initial Discussion (Annexations, Zone Changes, Variances, Planned Unit Developments and Special Use Permits). Any proposed development related action (as listed herein) causing need for public notification, review and approval by a recognized board, committee, commission or council (excludes design or building permit submittals that may require design review committee consideration) shall first be required to have said proposal reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.
  - (a) Neighborhood group and/or noticed area (property owners within the notification distance) notification determination. Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:
    - (i) Development that is likely to cause significant traffic impacts due to limited roadway access or potentially a decrease in level of service based on the subject roadway's design.
    - (ii) Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential.
    - (iii) Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is development consistency with surrounding development styles as they may relate to setback standards, architectural style, etc. An example of a concern not congruent to the criterion is disapproving development on vacant property due to the elimination of "open space" said vacant property provides or development of vacant property because one's view may be compromised,

- (b) Early Notification exception. Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group/noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing concerns raised at said meeting shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood entities prior to consideration by any formal reviewing body.
- (c) Early notification recipients. Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Early notification shall take place no later than fifteen (15) calendar days prior to the date of submittal. Any party requesting a meeting pursuant to item (d) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.
- (d) Early notification form and content. All required early notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:
- (i) a detailed description of what is being pursued in terms of development
  - (ii) information as to how the developer, applicant, or representative for the development action may be contacted

- (iii) a statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur
- (iv) an open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully
- (v) A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated fifteen (15) calendar day threshold. Requests for a meeting within the fifteen (15) calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this fifteen (15) calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.
- (vi) Community Development staff contact information for any related correspondence or general inquiry.

2. Neighborhood group/noticed area meeting. It shall be the responsibility of the applicant or representative for the proposal to conduct the meeting and supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that took place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

#### D. APPLICATION PROCEDURES.

Planning and Zoning Commission. Application for all zoning district changes, annexations, initial zonings, special use permits, planned unit developments, Sec. 38-10 variances, and Zoning Code and Sign Code text amendments shall be submitted to the Community Development Department. The submittal requirements for the above-listed requests include, but are not limited to, the following:

- a. Zoning District Changes, Annexations (Refer to Chapter 37, Article IX: Annexations, of the Subdivision Code), Initial Zoning and Sec. 38-10 variances:
  - 1) Official Zoning application and Development Statement,
  - 2) Submittal fee,
  - 3) Notarized affidavit,

- 4) Copy of property's survey and legal description:  
An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable.
- 5) Copy of site plan, if applicable:  
The site plan shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:
- a) Title of site plan.
  - b) Total acreage of site.
  - c) Date of preparation, north arrow, written and graphic scale.
  - d) Identification of site by lot, block, subdivision, if applicable.
  - e) Name and address of property owner.
  - f) Name and address of applicant, if applicable.
  - g) Name and address of consulting firm or representative, if applicable.
  - h) Location and type of all land uses.
  - i) All site improvements with all setbacks indicated.
  - j) Dimensions of all buildings.
  - k) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
  - l) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
  - m) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
  - n) Where applicable, location and arrangement of all open space, common recreational space, and private open space.
  - o) Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:
    - (1) All new development illustrating all exterior building materials and colors.
    - (2) All new development illustrating relationships to neighboring uses, including site lighting.
    - (3) Sign location, materials, color, size, shape, and lighting.

- p) A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, the Planning and Zoning Commission, or the City Council.
  - q) Application materials which are illegible and/or otherwise of a low quality will not be accepted.
  - r) A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional information before acting on a request. The City Council may require additional information before acting on an appeal.
- 6) Description and justification of requested variances,
  - 7) Request and justification to waive submittal requirements, and
  - 8) An application that meets the following conditions:
    - a) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the Dona Ana County Clerk's Office.) Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code.
    - b) Any pending litigation or any Final Order entered by any Court of Law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.
    - c) The Community Development Director or designee may reject any application if the ownership of the subject property is not clearly established.
  - 9) Copy of notification letter to neighborhood group and/or noticed area and copy of minutes (summary or verbatim) from meeting pursuant to Section 38-10 C. 1. (d) (v).
- b. Special Use Permits and Sec. 38-10 variances: See Sec. 38-54. Also refer to C.a.9. above if applicable.
  - c. Planned Unit Developments and Sec. 38-10 variances: See Sec. 38-49. Also refer to C.a.9. above if applicable.
  - d. Infill Development proposals excluding building permit development pursuant to Section 38-48. Also refer to C.a.9. above as applicable.
  - e. University District proposals excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.

- f. Avenida de Mesilla Gateway Zone Overlay District excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.
- g. Airport Overlay Zone District excluding building permit development pursuant to Section 38-46. Also refer to C.a.9. above as applicable.
- h. Lohman Avenue Overlay Zone District excluding building permit development pursuant to Section 38-47. Also refer to C.a.9. above as applicable.
- i. North Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.1. Also refer to C.a.9. above as applicable.
- j. South Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.2. Also refer to C.a.9. above as applicable.
- k. Alameda Depot Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.3. Also refer to C.a.9. above as applicable.
- l. Zoning Code and Sign Code Text Amendments: Submit fee and a draft of the proposed code text amendment to the Community Development Department. The Community Development Director or designee may require that a proposed text amendment to the Comprehensive Plan, affected Plan element or other affected plans be submitted with the code text amendment.

Submittal requirements may be waived by the Community Development Director or designee. The staff may require more information before processing a request. The Planning and Zoning Commission and/or the City Council may require additional information and/or require a neighborhood group and/or noticed area meeting at any point in the consideration of the proposal before the affected body before acting on a request and/or appeal.

#### E. PUBLIC HEARING AND NOTICE REQUIREMENTS.

- 1. Public Hearing - The Planning and Zoning Commission shall conduct a public hearing at a regular or special meeting on the following:
  - a. Proposed amendment to the Comprehensive Plan, Plan element, other plans required to be reviewed,
  - b. Proposed amendment to the Zoning Code and Sign Code,
  - c. Zoning district change, with or without conditions,
  - d. Special Use Permit,
  - e. Planned Unit Development,
  - f. Annexation and Initial zoning,
  - h. Variances (See Sec. 38-10G), and
  - i. Infill Development Proposals.

2. Agenda - The agenda for Planning and Zoning Commission meetings shall be available no later than fifteen (15) calendar days prior to any meeting.
3. Posting - Notice of the public hearing about a request shall be posted in conspicuous places on the property by the property owner, applicant or representative at least fifteen(15) calendar days prior to the Planning and Zoning Commission meeting. A sign measuring four (4) feet by four (4) feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the initial reviewing entity and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.
4. Notice –
  - a. Notice of the Planning and Zoning Commission public hearing shall be sent by certified mail to all property owners when one city block or less is under consideration for the activities listed, (except zone change-related cases that are recommended to City Council and subdivision related cases, see Section 38-10B2b, where notice shall be sent by regular, non-certified, first class mail), as shown by the records of the County Assessor, within at least one hundred (100) feet of the subject property of the proposed request, excluding streets, alleys, channels, canals, railroads, and all other public rights-of-way. Thereafter, regular, non-certified, first class mail shall be sent to those properties that fall within a distance greater than one hundred (100) feet and no less than five hundred (500) feet of the subject property. The secondary distance of ( $\geq 100'$  -  $\leq 500'$ ) may include streets, alleys, channels, canals, railroads, and all other public rights-of-way.. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing. Notice of the time and place of the public hearing shall be published at least fifteen (15) calendar days prior to the public hearing in a newspaper of general circulation in the City.
  - b. Notice of the City Council public hearing regarding zone change-related cases see Section 38-10B2b, shall be sent by certified and/or regular, first class, non-certified mail as outlined in paragraph D4a.

F. SPECIAL NOTIFICATION. The Community Development Department shall provide notification, by certified mail, to the Town of Mesilla of all cases presented to the Planning and Zoning Commission. Notification shall be required for only those cases south and west of Interstate Highway 10, north of Union Avenue and east of Motel Boulevard (N.M. State Highway 292). For notification area, see Figure 1: Town of Mesilla Special Notification Area Map at the end of this Article.

G. ANNEXATION AND INITIAL ZONING.

A petition for annexation shall include an annexation plat, master plan and initial zoning request. Annexation plat, master plan and initial zoning shall be heard as one case, but separate action shall be taken on the annexation plat, master plan and initial zoning. The City Council shall take final action on the annexation plat, master plan and the initial zoning request after the Planning and Zoning Commission provides a timely recommendation. For detailed information about annexation, refer to Chapter 37, Article IX: Annexations, of the Subdivision Code.

H. ZONING DISTRICT CHANGES WITHOUT CONDITIONS (Unconditional Zoning).

A zoning district change or rezoning is a change in classification of property. When approved by the City Council and the thirty (30) calendar day appeal period has expired, the zoning district change shall be recorded and shown on the appropriate zoning district map within the "Official Zoning District Atlas." Approved initial zoning shall be shown on the appropriate zoning district map within the Official Zoning District Atlas. Special Use Permits shall not be considered a zoning district change. No condition that restricts the use of land beyond that otherwise provided by district provisions shall be concurrently imposed with the approval of a zoning district change, except as outlined in Sec. 38-10H. However, a variance may be recommended by the Planning and Zoning Commission and granted by the City Council as part of a zoning district change request.

I. ZONING DISTRICT CHANGES WITH CONDITIONS (Conditional Zoning).

1. AUTHORIZATION. Zoning district changes may be approved subject to one or more conditions that restrict the use of land beyond that otherwise provided by the district. Variances may be recommended by the Planning and Zoning Commission and granted by the City Council as part of conditional zoning consideration.
2. PURPOSE AND INTENT. A rezoning subject to a condition is to be used only in circumstances where the proposed change of district is appropriate to allow certain uses which are in accordance with the Comprehensive Plan, and which are not incompatible with the surrounding neighborhood.

3. SCOPE. It shall be unlawful to utilize, sell, or lease property rezoned with conditions without first providing to any prospective buyer or lessee a disclosure statement stipulating the conditions and the time limitation prescribed, if any, and without filing a copy of said disclosure with the office of the Doña Ana County Clerk. A condition attached to a zoning district change shall be consistent with the goals, objectives and policies of the Comprehensive Plan, Plan elements or other plans adopted by the City Council and may
  - a. Limit the use of property affected so that one or more of the uses which would otherwise be permitted in the district being adopted shall not be permitted in the specific district as conditioned, and/or
  - b. Require compliance with such design standards or time limitations relating to the construction, placement and size of buildings, landscaping, streets, roadways, pathways, utilities, drainage ways, and other site design features as may be necessary to protect the community from the impact of future development.
4. LIMITATION ON USING CONDITIONAL ZONING. Any use or structure that requires a Special Use Permit under Sec. 38-54 shall not be permitted by using conditional zoning.
5. INITIATION OF CONDITIONAL ZONING. Conditional Zoning may be initiated by the Community Development Director or designee, the Planning and Zoning Commission, City Council, or by the applicant. Requests shall specify those uses, site design features, time limitations, or other conditions for the conditional zoning.
6. PLANNING AND ZONING COMMISSION ACTIONS. The Planning and Zoning Commission shall follow procedures specified in this Section when acting on proposed zoning district changes with conditions. The Planning and Zoning Commission may consider and take action on all aspects of the proposed conditions and limitations. The substance of all proposals, site plans, and other pertinent information with regard to conditional zoning shall be made a permanent part of the action recommending approval of said conditional zoning.
7. AMENDMENT OF OFFICIAL ZONING DISTRICT ATLAS. The Official Zoning District Atlas shall be amended as necessary to reflect the existence of zoning changes with conditions. Areas affected by conditions shall be identified by the use of the suffix "C" and shall be clearly distinguished from areas in like zoning district that are not subject to special limiting conditions. The action creating a district subject to conditions and a copy of all conditions shall be available in the Community Development Department as a supplement to the Official Zoning District Atlas.
8. CONDITIONAL ZONING CONTROL. Conditions attached to a zoning district change shall govern over any less restrictive zoning regulations unless specifically provided otherwise. All other regulations not specifically affected by a condition shall apply in the same manner as if the property were not subject to conditions.

9. **REVOCAION OF CONDITIONAL ZONING DESIGNATION.** A conditional zoning designation shall be revoked and revert to the previous zoning district designation if the designated property is not used or developed in accordance with the conditions and all other applicable regulations within two (2) years from the date of City Council approval. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate. When the only conditions placed upon a zoning designation are prohibitions (such as No billboards allowed or No medical offices allowed), the conditions shall run with the land and shall not be subject to the two (2) year development window previously stated. Futhermore, these prohibitive conditions shall only be removed if a re-zoning action causes the condition to be removed. If compliance with the "non-prohibitive" conditions are not made whole, the property shall revert back to the prior designation unless the Community Development Director or designee certifies in writing that remedial action can bring about compliance with approved conditions in a timely fashion. Reversion shall cause the use of the property to follow appropriate zoning requirements as applicable. When conditions speak to performance criteria (i.e. requirement for opaque screen along north property line or height limitations established, etc.) upon development, conversion of property or expectation thereof, the two (2) year revocation period shall apply.

J. VARIANCES. The Planning and Zoning Commission and the Public Works Director or designee (See Sec. 38-10I.1) are authorized to grant variances.

1. A variance shall be defined as a variation in the numerical requirements of this Code, the Sign Code, or the Design Standards (landscaping). Numerical variances to the clear sight triangle requirements shall be considered, reviewed, denied, or approved by the Public Works Director or designee, as per Article III of Chapter 26.
2. A variance proposal to be acted on by the Planning and Zoning Commission may either be part of a request for rezoning, initial zoning, special use permit or planned unit development, or be submitted independent of such proposals and heard based on the individual merits of the request. Use variances, which are non-numerical, as well as numerical variances to the provisions of this Code, may be granted by the Planning and Zoning Commission only in accordance with the Infill Development Process (IDP), Sec. 38-48. Administrative decisions on or interpretations of the Zoning Code or the Sign Code by staff may be affirmed, reversed, or modified pursuant to this section and appealed to the City Council in accord with Sec. 38-13, except as provided in Sec. 38-4D.
3. In the event of a denial decision by the Planning and Zoning Commission and/or City Council, there shall be no reapplication for the exact same variance, which was properly advertised and acted on, for a period of one (1) year after the date of the decision of the Planning and Zoning Commission and/or City Council. A modified variance request processed through the IDP, Sec. 38-48, may be resubmitted at any time following action by the Planning and Zoning Commission.
4. A variance shall be automatically revoked if a building permit, sign permit or business registration/license for the approved variance has not been obtained within one (1) year. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate.

K. CRITERIA FOR DECISIONS.

The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the Comprehensive Plan, Plan elements, other applicable plans, and the purpose and intent of this Code, Sec. 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Members of the Planning and Zoning Commission shall state the factual basis and the findings for their vote.

Furthermore, granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief in order to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary. In addition to criteria already referenced, decisions may consider:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question.
2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.
3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

L. NOTICE OF DECISION.

Upon making a recommendation to the City Council or taking final action on matters for which the Planning and Zoning Commission has been granted final authority, the Community Development Department shall promptly

1. Prepare a written decision that includes an order stating the factual basis and the findings of the Planning and Zoning Commission which support the order
  - a. Recommending the granting or denying of relief, or
  - b. Granting or denying relief;
2. File the written decision with the City Clerk's Office;
3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the Planning and Zoning Commission to all parties whose rights are adjudged by the decision and that contains the requirements for filing an appeal;
4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the Planning and Zoning Commission to every person who has filed a written request with the Community Development Department for notice of the decision.

M. APPEAL TO CITY COUNCIL.

Decisions of the Planning and Zoning Commission may be appealed to the City Council in accord with the provisions of Sec. 38-13.

N. RESUBMITTAL OF REQUEST.

A request denied by the Planning and Zoning Commission and/or the City Council shall not be resubmitted or reconsidered for a period of one (1) year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six (6) months after such denial decision. Special use permits or planned unit developments processed through the IDP that are denied by the Planning and Zoning Commission may be modified and resubmitted at any time following action by the Planning and Zoning Commission.

**Sec. 38-11. Reserved****Sec. 38-12. Reserved****Sec. 38-13. City Council**

- A. FINAL ACTION. After recommendation from Community Development Department staff, if applicable, and the Planning and Zoning Commission, the City Council shall take final action on the following:
1. Comprehensive Plan, Plan elements, other plans sent from the Planning and Zoning Commission and all amendments,
  2. Zoning district change requests,
  3. Initial zoning requests,
  4. Concept Plan and Final Site Plans submitted with the Concept Plan of Planned Unit Developments (subdivisions requesting three or more waivers to planning-related issues become planned unit developments),
  5. Associated variances with A.2 through A.4 above,
  6. Zoning Code and Sign Code amendments, and
  7. Appeals of decisions of the Planning and Zoning Commission.
- B. CHANGING AND RECONSIDERATION OF PETITIONED ZONING PROPOSALS. A zoning district change or initial zoning request may be amended by the City Council to be more restrictive. Such amendment and reconsideration shall not require readvertisement or notice to surrounding property owners if considered by the City Council at the original (first) Public Hearing. Subsequent public hearings shall require readvertisement and notice to surrounding property owners unless the hearing is continued or the request is postponed to a specific date.
- C. GROUND FOR APPEAL TO CITY COUNCIL. Any person, or any department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code, or any other resolution, rule or regulation adopted pursuant to Sections 3-21-1 through 3-21-12 and 3-21A New Mexico State Statutes Annotated, 1978 Compilation, may appeal such decision to the City Council. Such appeal must be initiated in writing within fifteen (15) calendar days after the decision and after all other procedures established by this Code have been exhausted. Any person that is a party to an appeal may request a "Battershell" due process proceeding in place of the automatic standard due process.
- D. STAY OF PROCEEDINGS. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee, or board from whom the appeal is taken certifies that by reason of facts a stay would cause imminent peril of life and property. Upon certification, the proceedings shall not be stayed except by order of District Court after notice to the official, commission, committee, or board from whom the appeal is taken.

- E. APPELLANT RESPONSIBILITY IN APPEALS. All appellants under this Section are required to submit to the Community Development Department a detailed written statement of the grounds of their appeal, including findings, no later than fifteen (15) calendar days after the decision is filed with the City Clerk's Office. The appeal shall state all issues to be considered. Only the issues stated shall be considered during the applicable proceeding.
- F. APPEAL NOTICE. Notice on all appeals, except Zoning and Sign Code amendments and interpretations, on decisions of the Planning and Zoning Commission shall be sent in complete accordance with Section 38-10, E. 4. a. With the exception of subdivision related matters, the specified exclusion referencing Section 38-10 B. 2. b. shall not apply for appeals under this section. Notice of the time and place of the appeal shall be posted in conspicuous places on the property by Community Development Department staff at least fifteen (15) calendar days prior to the appeal public hearing.
- G. AUTHORITY OF THE CITY COUNCIL. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission, committee, or board in the enforcement of this ordinance, or any other resolution, rule or regulation adopted pursuant to the above stated State Statutes, the City Council, by a majority vote of all its members may, after all other procedures established by the provisions of this Code have been exhausted, reverse or affirm any order, requirement, decision or determination of an administrative official, commission, committee or board; or make any change in an order, requirement, decision, or determination of an administrative official, commission, board, or committee.

Members of the Planning and Zoning Commission shall not participate in any way in an appeal before the City Council of any decision of their Commission. The minutes of each Commission meeting are the public record that indicates each Commission member's participation. This restriction applies to members of other groups or committees, e.g., University Avenue Corridor Citizens' Design Review Committee, when the group or committee is required to make a recommendation to the Planning and Zoning Commission.

- H. NOTICE OF DECISION. Upon City Council making any final decision, the Community Development Department shall promptly
1. Prepare a written decision that includes an order stating the factual basis and the findings of the City Council which support the order;
  2. File the written decision with the City Clerk's Office;
  3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the City Council to all parties to the appeal submitted to the City Council, including persons who had filed a formal protest as an aggrieved person, and that contains the requirements for filing an appeal;
  4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the City Council to every person who has filed a written request with the City Clerk for notice of the decision.

I. AMENDMENT, REPEAL, AND REVIEW OF THE ZONING CODE.

1. The City Council, after a public hearing and after a recommendation from the Planning and Zoning Commission, may amend, supplement, or repeal any portion or all of this Code.
2. There shall be a continuous evaluation of the provisions of this Code, and amendments shall be submitted to the City Council as deemed necessary.

**Sec. 38-14. Appeal to District Court**

Any person dissatisfied with an order or determination of the Planning and Zoning Commission, after review of the order or determination by City Council; may commence an appeal in District Court pursuant to the provisions of Section 12-8A-1 NMSA 1978, as amended, and Section 39-3-1.1 NMSA 1998, as amended.

Any person aggrieved by a determination of the City Council may appeal to the District Court within thirty (30) calendar days after the final decision of the City Council has been filed with the City Clerk's Office.

**Sec. 38-15. Violations of the Zoning Code**

- A. VIOLATIONS. It shall be a violation of this Code for any person, firm, or corporation to neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any requirement pursuant thereto, or in any way use, change, or construct a building or structure in non-conformance with zoning approval. Each day that such violation exists shall constitute a separate offense. Any violation herein described is governed by the provisions of the Las Cruces Municipal Code and its subsequent amendments.
- B. PENALTIES. The Las Cruces Municipal Court shall impose the penalties for each day the violation of this Code exists. In addition to fines, the Las Cruces Municipal Court may grant injunctive relief in accordance with the provisions of the Las Cruces Municipal Code and its amendments.
- C. OTHER REMEDIES. Nothing herein shall limit the City from seeking other remedies at law or equity to enforce the Zoning Code. Violations of this Code shall be brought into compliance, abated, removed, and/or pursued in the applicable court of law. In all such cases that the Court rules to allow non-conformance with this Code, there shall be a pro forma action by the Planning and Zoning Commission permitting such non-conformance. Such action shall be consistent with the Court's ruling, and thereafter said non-conformance shall be considered legal non-conforming and be subject to the provisions thereof.

**Sec. 38-16. Enforcement Provisions**

- A. DUTY TO ENFORCE. The official(s) designated by the City Manager shall enforce this Code.
- B. BUILDING PERMITS AND PLANS. No building or structure, except those exempted by the City's Building Code, shall be erected, enlarged, or structurally altered until a building permit has been issued and zoning approval of all plans has been granted by the Community Development Director or designee.
- C. CERTIFICATE OF OCCUPANCY. Certificate of Occupancy approving a structure or use of land shall be required for all of the following prior to occupancy:
1. Occupancy and use of a building hereafter erected or structurally altered;
  2. Change in use of an existing building to a use of a different classification;
  3. Occupancy and use of vacant land;
  4. Change in the use of land to use of a different zoning district classification;
  5. Change in the use of a non-conforming use, including the alteration or expansion of a non-conforming use or structure.
- D. LEGAL DOCUMENTS TO INSURE COMPLIANCE. The Community Development Director or designee may require affidavits, disclosure statements, deed restrictions, or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

**Sec. 38-17. Fees**

All fees relating to this Code shall be adopted by resolution of the City Council.

**Sec. 38-18 -- 38-19. Reserved.**

**Figure 1: Town of Mesilla Special Notification Area, see page 14**

**Exhibit 'A' (pt. 2)****Sec. 38-49. PUD - Planned Unit Development****A. PURPOSES.**

The purposes of planned unit developments (PUD) are to:

- (1) Comply with Growth Management Policy as established in the Land Use Element, other applicable elements and all companion documents to the Comprehensive Plan.
- (2) Produce more flexibility in development than would result from a strict application of this Code.
- (3) Permit design flexibility that will encourage a more creative approach to the development of land and that will result in more efficient and aesthetically desirable alternatives to the housing and other development needs of the community.
- (4) Permit flexibility in land use, density, placement of buildings, arrangement of open space, circulation facilities, and off-street parking areas, and maximize the potential of individual sites under development.
- (5) Promote the infill of vacant land.
- (6) Create developments that balance the benefits to the community with the developer's interests.

**B. GENERAL PROVISIONS.**

- (1) The PUD process shall be required for those proposed developments that are to be subdivided and multi-phased and that request three (3) or more deviations to planning-related minimum development standards, e.g., setbacks. An applicant whose proposed development is not required to follow the PUD process may request to use the PUD process.
- (2) The Infill Development Process (IDP) described in Section 38-48 authorizes the Planning and Zoning Commission to take final action on PUD's. However, proposed development in Infill Areas is not required to use the PUD process, but may use the Infill Development Process.
- (3) Proposed deviations to engineering standards, e.g., street construction standards, will be acted on by the Public Works Department Director or designee with appeal to the Engineering Review Committee. However, the PUD process shall not be used if only deviations to engineering standards are proposed.
- (4) A developer shall not be granted a deviation to planning-related minimum standards (private incentive) without providing a public benefit to the City/community. The Land Use Element of the City's Comprehensive Plan provides guidance in determining appropriate public benefits in relation to private incentives. One or more public benefits are to be provided for each private incentive. For example, the private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

- (5) A PUD may be used to correct any legal nonconforming situation. However, a PUD shall not be used to make an illegal situation legal.
- (6) All contiguous property owned or legally controlled by the developer shall be included within the PUD.

### C. SPECIFIC PROVISIONS.

A Planned Unit Development shall meet minimum development standards. The existing development standards, e.g., Zoning Code requirements, shall be met, or minimum development standards, as proposed by the applicant, and approved as part of the PUD, shall be met. The applicant shall clearly describe the PUD in terms of all of the following specific provisions. In addition, the Community Development Director or designee may recommend conditions and the Planning and Zoning Commission or the City Council may impose conditions and require compliance with such other standards as deemed necessary.

- (1) Land Use. A PUD may contain any land use or combination of land uses.
- (2) Location. A PUD may be located anywhere within the City except within the University Avenue Corridor Plan Overlay Zone District. However, the PUD process shall not be used to circumvent the requirements of any overlay zoning district.
- (3) Size. There is no acreage minimum or maximum.
- (4) Density. There is no minimum or maximum number of dwelling units per acre.
- (5) Intensity. There is no minimum or maximum square footage requirement for nonresidential uses.
- (6) Off-Site Roadway and Intersection Improvements. Contributions to or the provision of off-site roadway and intersection improvements shall be required based on the proportionate share of the PUD's impact on off-site roadway segments and intersections. Off-site roadway and intersection improvements necessary in whole or in part because of the PUD's impacts shall be provided according to the improvements schedule outlined in the required traffic impact analysis called for in the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element of the Comprehensive Plan). Furthermore, improvements shall be consistent with Growth Management policy of the Land Use Element.
- (7) Architecture. PUD architecture shall be compatible with and enhance the existing architecture on adjacent property.
- (8) Design. The City may alter the design of the proposed PUD to insure the public health, safety, and welfare.

- (9) Context. The City may alter the proposed PUD to insure compatibility with existing and potential land uses adjacent to the proposed PUD.
- (10) Antennas, Towers, Communication Structures, and Other Vertical Structures. See Section 38-59.
- (11) Height. See Section 38-31D and Section 38-32D.
- (12) Landscaping. See Chapter 32 of the Municipal Code.
- (13) Mobile Home Parks/Recreational Vehicle Parks. See Section 38-57.
- (14) Open Space. See Chapter 32 of the Municipal Code.
- (15) Off-Street Parking. See Section 38-58.
- (16) Roadway Access. See Chapter 26, Article III, Access and Median Cuts. The proposed PUD shall be accessed by at least one paved roadway (meeting the City of Las Cruces Standard Specifications for Road Construction) within the minimum right-of-way for the roadway width having the capacity necessary to serve the first phase of the PUD. Additional access may be required before other phases of the PUD are allowed to proceed.
- (17) Setbacks/Bufferyards/Screens. (See Matrix 1 at the end of this section)
- (18) Signage. See Chapter 36 of the Municipal Code.
- (19) Walls and Fences. See Section 38-60.
- (20) Accessory Uses and Structures. See Section 38-51.
- (21) Private Incentives/Public Benefits. For each private incentive (deviation to existing Municipal Code planning-related minimum standards listed above) requested, one or more public benefits shall be provided. For example, a private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

D. REVIEW PROCEDURES.

- (a) Authorization. A Planned Unit Development (PUD) is a zoning district change and is not permitted by right in any zoning district. The procedures and requirements in this Article shall govern the development of a PUD.

For each PUD, there shall be a Pre-Application Conference, Concept Plan, one or more Final Site Plans and, if required, one or more Final Plats. The following table summarizes actions to be taken on a PUD:

	<u>Staff</u>	<u>P &amp; Z</u>	<u>City Council</u>
Pre-App. Conf.	R		
Concept Plan	R	R (FA*)	FA (A*)
Final Site Plan	R	FA (R**)	A (FA**)
Final Plat***	FA	A	A

Recommendation (R), Final Action (FA), and Appeal (A)

- \* The Planning and Zoning Commission is authorized to take final action using the Infill Development Process within Infill Areas.
- \*\* The City Council shall take final action on final site plans when one or more is submitted along with the Concept Plan.
- \*\*\* A Final Plat may not be required in every case.

- (b) Pre-Application Conference. Any proposed PUD shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

- (c) Concept Plan Review.

(1) Concept Plan Application

The Concept Plan is similar to, and replaces, a subdivision master plan in that it is intended to serve as a tool that can assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD.

The Concept Plan and supplemental material shall be submitted to the Community Development Department no later than sixty (60) calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Section 38-49E, the Community Development Department shall issue a receipt for submittal. A Concept Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Concept Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The Community Development Director or designee may waive any submittal requirement. However, after reviewing the Concept Plan, the Community Development Director or designee, the Planning and Zoning Commission and/or the City Council may require additional items and resulting information in addition to the submittal requirements as per Section 38-49E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests by staff shall be justified in writing.

A written staff report with recommendations shall be provided to the Planning and Zoning Commission along with the Concept Plan. The report shall recommend that the Concept Plan be approved, conditionally approved, disapproved, or postponed.

(2) Concept Plan Public Hearing(s)

Public hearing and notice requirements shall be in accord with provisions of Section 38-10. The applicant or applicant's representative shall be present at the public hearing for the proposal to be considered. If the applicant or representative is not at the public hearing, the Concept Plan shall be postponed until the next regular Planning and Zoning Commission meeting or City Council meeting.

The Planning and Zoning Commission shall review the Concept Plan, staff report, applicant presentation, and information submitted by interested citizens. Action by the Planning and Zoning Commission shall be a recommendation to the City Council for approval, conditional approval, or disapproval. The Planning and Zoning Commission is authorized to take final action on a PUD using the Infill Development Process within Infill Areas. An Official Notification of Decision that describes the decision of the Planning and Zoning Commission and/or City Council shall be furnished to the applicant in compliance with State law.

The Concept Plan may be approved only if it includes the following findings:

- a. The proposed construction and use of the PUD will not be detrimental to the health, safety, or welfare of the community or adjacent neighborhood;
- b. There is or will be adequate sewage capacity, roadway capacity, energy supply, and potable water supply to serve the PUD at the time a certificate of occupancy or letter of acceptance, as applicable, is to be issued;

- c. The PUD conforms to the intent, goals, objectives, policies, and standards of all City plans and codes;
- d. The uses proposed, including their density and intensity, are appropriate to the character of the neighborhood and will have a positive aesthetic effect on the neighborhood in which the PUD will be located; and
- e. The proposed uses will not subject surrounding properties and pedestrians to significant hazardous traffic conditions.

Final approval may be granted subject to compliance with such conditions required by the Planning and Zoning Commission and/or the City Council. The conditions that the Planning and Zoning Commission and/or City Council find necessary shall be made part of the terms under which the PUD is granted. The Planning and Zoning Commission and/or the City Council may require such conditions to be included as covenants or deed restrictions in any subsequent conveyances of PUD property. Such covenants and deed restrictions shall be properly recorded with the Dona Ana County Clerk. Furthermore, the Planning and Zoning Commission and/or City Council may require that all or part of any utility corridor, roadway, walkway, bike facility, park, playground, or other public area shown on the Concept Plan be dedicated for public use as an easement, right-of-way, or other conveyance.

If the Concept Plan is approved or conditionally approved by the Planning and Zoning Commission and/or the City Council, the PUD shall be shown on the Official Zoning District Map as PUD replacing the existing zoning districts.

### (3) Concept Plan Effective Period

The approval of the Concept Plan shall be effective for a period of five (5) years. If a Final Site Plan for all or part of the area has not been approved by the Planning and Zoning Commission and/or City Council by the expiration of the five (5) year period, the Concept Plan approval shall expire. The zoning of the property shall automatically revert to the underlying zoning districts that existed for the property at the time the Concept Plan was approved. Prior to the expiration date, the staff may approve a request for an extension of time of up to two (2) years. After the first time extension, the Planning and Zoning Commission and/or City Council shall consider any other time extension request. When at least one Final Site Plan has been approved, the Concept Plan shall remain effective until amended.

### (4) Concept Plan Amendment

Any substantial change proposed that would affect the approved Concept Plan shall require re-submittal of the Concept Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes to the Concept Plan are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

- a. Any change that would increase the intensity of the land uses;
- b. Fifteen (15) percent cumulative increase in vehicular traffic to any roadway segment or intersection;
- c. Fifteen (15) percent cumulative increase in residential density;
- d. Fifteen (15) percent cumulative increase in nonresidential square footage;
- e. Any change in private incentives and public benefits;
- f. Increase in size of property;
- g. Any reduction in screening, bufferyards and setbacks at the PUD property line;
- h. Fifteen (15) percent cumulative increase in the buildable area for structures including signs; and
- i. Fifteen (15) percent cumulative reduction in open space.

(d) Final Site Plan Review.

(1) Final Site Plan Application, Public Hearing and Effective Period

A Final Site Plan shall substitute for a subdivision preliminary plat when an applicant must otherwise comply with the subdivision requirements. Upon approval of the Concept Plan, the applicant may submit a Final Site Plan for part or all of the land area covered by a Concept Plan for Planning and Zoning Commission consideration. However, an applicant may submit a Final Site Plan along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.

The Final Site Plan and supplemental material shall be submitted to the Community Development Department no later than sixty (60) calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Section 38-49E, the Community Development Department shall issue a receipt for submittal. A Final Site Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Final Site Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The staff may waive any submittal requirement. However, after reviewing the Final Site Plan, the Planning and Zoning Commission and or the City Council may require additional items and resulting information in addition to the submittal requirements as per Section 38-49E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing.

A written staff report with recommendations about the Final Site Plan shall be provided to the Planning and Zoning Commission along with the Final Site Plan. The report shall recommend that the Final Site Plan be approved, conditionally approved, disapproved, or postponed.

The review procedures for the Final Site Plan shall be the same as for the Concept Plan except that:

- a. The Planning and Zoning Commission shall take final action instead of the City Council unless a Final Site Plan has been submitted along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.
- b. No findings are required except that the Final Site Plan conforms to the Concept Plan.
- c. A Final Site Plan shall be effective for two (2) years from the date of approval. When at least one Final Plat or at least one Building Permit has been approved, the Final Site Plan shall be effective until amended.

Approval of a Final Site Plan shall not constitute approval of a Final Plat when a Final Plat is required. Such approval shall constitute the permission to prepare and submit a Final Plat for part or all of the land area covered by the Final Site Plan and construction drawings of all improvements for the Final Site Plan land area. Final platting shall not be considered until a Final Site Plan is approved. If a Final Plat is not required, an approved Final Site Plan shall allow for a building permit to be issued that is in compliance with Chapter 30, Buildings and Building Regulations. Notation on documents shall clearly indicate that the project receiving the building permit is part of a PUD and is subject to the approved Concept Plan and approved Final Site Plan.

In granting approval of a Final Site Plan, the Planning and Zoning Commission shall require adequate guarantees of compliance with all conditions of approval. Such guarantees may include, but are not limited to, performance bonds, lien agreements, or escrow deposits in an amount sufficient to ensure compliance. Moreover, the construction of a PUD following approval of a Final Site Plan shall be in accordance with the Concept Plan and Final Site Plan conditions. Failure to comply with such conditions and standards shall be deemed a violation of this Code.

## (2) Final Site Plan Amendment

Any substantial change proposed that would affect the approved Final Site Plan shall require re-submittal of the Final Site Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

- a. Increased drainage impact;
- b. Change in location and size of utilities and easements;

- c. Change in required, specific landscape features such as buffers, screens and setbacks at the PUD property line;
- d. Change in proposed roadways above major local class;
- e. Change in structure location, including signs, by more than five (5) feet; and
- f. Change in architectural style or character.

(e) Final Plat Review and Contents.

If required, the Final Plat(s) review procedures and contents shall comply with Article IV of Chapter 37, the City's Subdivision Code.

E. SUBMITTAL REQUIREMENTS.

- (a) Concept Plan Submittal Requirements. A request for review of a Concept Plan shall include the following information:
- (1) Official Application and Development Statement
  - (2) Submittal Fee
  - (3) Waiver request and justification to delete submittal information, if applicable.
  - (4) Descriptions of deviations to planning-related development standards and the public benefits to be provided.
  - (5) Association by-laws (may be submitted with each Final Site Plan.)
  - (6) Concept Plan. The following information shall be provided on the Concept Plan and supporting maps and drawings:
    - a. Name of Concept Plan.
    - b. Name, address and telephone number(s) of property owner(s), developer(s) and consultant(s) preparing the Concept Plan.
    - c. Detailed area map showing the surrounding area within a half mile and the PUD in relationship to adjacent parcels, existing roadways, and natural or man made features that may impact or be impacted by the PUD.
    - d. North arrow, date of preparation, and written and graphic scale.
    - e. Legal description.
    - f. Boundary lines of Concept Plan area with approximate length of lines and boundary lines of phases.
    - g. For each lot, parcel, or tract, list proposed land uses and acreage and show building area boundaries within which each structure will be located:
      - 1. Maximum number of dwelling units and maximum density.
      - 2. Maximum square footage of nonresidential uses.
    - h. Proposed screening and bufferyard/setback distances along the PUD property line.
    - i. Existing land uses and zoning on adjacent lots, parcels, or tracts.
    - j. Name of adjacent subdivisions (including the filing date, book and page numbers), property owners, and zoning. If not subdivided, name of property owner.
    - k. Twenty foot (20) contour intervals minimum or as appropriate.

1. Proposed alignment of roadways and how they relate to the Metropolitan Planning Organization (MPO) Transportation Plan and the Transportation Element of the Comprehensive Plan and the impacts created on the area road network, neighborhood, and other land uses. Impact data shall include the anticipated traffic volume generated by the proposed development, identification of the affected road network, and the additional traffic volumes associated for each road. If required, provide a Traffic Impact Study, including a roadway improvement schedule, consistent with the requirements of the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element) and based on the latest recommendations from the Institute of Traffic Engineers. Thoroughfare System: Identification of adjacent roadways and other transportation lines by functional classification; proposed location, length, width of all roadways, bikeways, trails, walkways, and any other transportation lines. Identify existing and proposed classification of roadways as per City of Las Cruces Design Standards and based on the current Las Cruces MPO Transportation Plan and the Transportation Element of the Comprehensive Plan.
  - m. Location and sizes of existing and proposed utilities.
  - n. Significant natural features, such as arroyos and 100-year flood plains.
  - o. All easements.
  - p. Tabular Information:
    1. Land uses of each lot, parcel, or tract.
    2. Total acreage of the PUD, acreage for each land use, and acreage of each land use by phase.
    3. Maximum number of dwelling units and maximum density by phase.
    4. Total square footage of nonresidential uses by phase.
    5. Total acreage for open space, private and public facilities, and right-of-way.
    6. Maximum height of proposed structures for each lot, parcel or tract.
  - q. Approval block signifying the final approved Concept Plan to be signed by the Zoning Administrator upon approval by the City Council and resolution of all outstanding staff comments.
- (7) Other Impact Studies, if required by the Planning and Zoning Commission, are to be submitted prior to City Council consideration:
- a. Impacts on any public facilities outside the PUD area. Impact data shall include expected population generated by the proposed development, identification of public facilities, e.g., utilities, parks, that are anticipated for use by said population and level of capacity of said utilized public facilities.

- b. Impacts on air quality, specifically solid particulates known as PM10. (Small airborne particulates, particulate matter less than or equal to 10 microns in diameter, are an important health concern because they are far more likely than larger particles to be inhaled deep into the lungs. This particulate matter is a respiratory irritant, can aggravate asthma and other lung diseases, and act as a medium of transport that allows the body to absorb heavy metals through oxidation. These small, suspended particulates also play some role in obscuring light, thus degrading visibility.) Impact data shall include identification of proposed uses that generate air pollution substances into the environment and the projected impact.
  - c. Impacts on views and noise to adjacent property. Impact data shall include identification of proposed uses that generate excessive noise, anticipated maximum height for proposed structures, identification of existing physical features that are viewed from the PUD and adjacent properties, and how these views will be altered by the PUD. Proposals to mitigate impacts shall be provided.
  - d. Geological and Soils Hazards: Report on the Geologic and Soils Hazards in relation to slope conditions, drainage problems and suitability for septic system use, if applicable, as identified by the Soil Survey of Dona Ana County Area, New Mexico. This report shall also include either an aerial photograph or a map with existing contours at an appropriate interval to establish accurate ground contour of the PUD area.
- (8) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

(b) Final Site Plan Submittal Requirements. A request for review of a Final Site Plan (FSP) shall include the following information:

- (1) Official Application and Development Statement
- (2) Submittal Fee
- (3) Waiver request and justification to delete submittal information if applicable.
- (4) Master Drainage Study consistent with Section 37-81 of the Subdivision Code and Article III, Drainage, of the City Design Standards.
- (5) Master Utilities Report and Plan consistent with Section 37-81 of the Subdivision Code.
- (6) A Final Site Plan. A FSP shall be at a scale that adequately represents the required information. A FSP shall be prepared on 18" x 24" sheets of paper. Copies shall be legible with no limit to the number of sheets provided. A FSP and supporting maps and drawings shall show existing conditions and all proposals, including the following:
  - a. Name of the FSP.
  - b. Total acreage of the FSP area to the nearest 1/10 of an acre.
  - c. Date of preparation, north arrow, written and graphic scale.
  - d. Vicinity Map to locate the FSP within the Concept Plan area. The Vicinity Map shall show relationship to existing major roadways.
  - e. Name and address of applicant.

- f. Name and address of the person, corporation, or organization preparing the FSP.
  - g. Number to identify each lot. Letter of the alphabet to identify each tract or parcel.
  - h. Proposed lot lines and right-of-way lines; rights-of-way and street widths; rights-of-way and easement widths for public services or utilities and any limitations thereof.
  - i. Dimensions, acreage, and purposes of tracts or parcels.
  - j. Sites and acreage for any multi-family dwellings or nonresidential uses.
  - k. Dimension of all buildings, setbacks, bufferyards, parking, walkways, lighting, signs, landscaping, walls, fences, open space, and recreation areas.
  - l. Architectural elevation drawings of all buildings, signs, and other structures.
  - m. On separate sheets, if necessary, include existing conditions of the proposed FSP area. If applicable, include the following:
    - 1. FSP name.
    - 2. Location, width, and purpose of all easements on site.
    - 3. Public rights-of-way on and within 150 feet of the site: name, width, and classification.
    - 4. Utilities on and adjacent to the site: Location and size of water wells, water reservoirs, water lines, sanitary and storm drains, and drainage facilities; location of all irrigation channels and drains; location of gas lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the direction, distance, and size of nearest lines.
    - 5. Existing topography guidelines:
      - i. For land with average slope of less than five percent (5%), show contour lines at intervals of not more than two (2) feet.
      - ii. For land with average slope of more than five percent (5%), show contour lines at intervals of not more than five (5) feet.
    - 6. Conditions on adjacent land significantly affecting design of the FSP: direction and gradients of ground slope, character and location of development, access points from adjacent points, and building types.
  - n. Approval block signifying the Final Site Plan approved to be signed by the Zoning Administrator upon approval by the Planning and Zoning Commission and resolution of all outstanding staff comments.
- (7) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

F. EXISTING PLANNED UNIT DEVELOPMENTS.

A PUD existing on the effective date of this Code may continue to develop based on the approved PUD conceptual plan and final site plan. However, a proposed substantial change as defined in this Division shall require that an existing PUD comply with all the requirements of this Code.

**Exhibit 'A' (pt. 3)****Sec. 38-54. Special Use Permits**

A GENERAL PROVISIONS AND PROCEDURES. A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. PRE-APPLICATION PROCEDURES. Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

1. APPLICATION PROCEDURES. An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

a. A letter of intent stating the following:

- 1) A statement of the purpose and use of the property,
- 2) All property improvements to be made, and
- 3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

c. Site Plans. The site plans shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

- 1) Title of site plan.
- 2) Total acreage of site.
- 3) Date of preparation, north arrow, written and graphic scale.
- 4) Identification of site by lot, block, subdivision, if applicable.

- 5) A statement of ownership, signed by the property owner, that complies with Section 38-10.C.8).
  - 6) Name and address of property owner.
  - 7) Name and address of applicant, if applicable.
  - 8) Name and address of consulting firm or representative, if applicable.
  - 9) Location and type of all land uses.
  - 10) All site improvements with all setbacks indicated.
  - 11) Dimensions of all buildings.
  - 12) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
  - 13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
  - 14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
  - 15) Where applicable, location and arrangement of all open space, common recreational space, and private open space.
- d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8½" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:
- 1) All new development illustrating all exterior building materials and colors.
  - 2) All new development illustrating relationships to neighboring uses, including site lighting.
  - 3) Sign location, materials, color, size, shape, and lighting.

A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, or the Planning and Zoning Commission.

Application materials which are illegible and/or otherwise of a low quality will not be accepted.

A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

Special Use Permit applications processed via the IDP for residential uses may exclude the landscaping plan and schedule as part of the submittal. All landscaping requirements of the City Design Standards shall be complied with at time of construction.

- e. Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).
2. PUBLIC HEARING AND NOTICE PROCEDURE. A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of Section 38-10 of this Code.
  3. REVIEW AND APPROVAL PROCEDURES. The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.
  4. TIME LIMITATIONS, REVOCATIONS, AND DEVELOPMENT STANDARDS. In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one (1) year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

Any major revision proposed to the Special Use Permit and site plan shall require resubmittal of the Special Use Permit and site plan in their entirety. Minor revisions are those changes that are not major and may be approved by the Community Development Director or designee. Major revisions to the Special Use Permit and site plan shall include, but are not limited to:

- a. Any change in land use,
- b. Fifteen (15) percent cumulative increase in land use or building square footage,
- c. Fifteen (15) percent cumulative increase in vehicular traffic on any roadway segment or intersection,
- d. Any increase or decrease in size of the Special Use area,

- e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line,
- f. Fifteen (15) percent cumulative increase in the buildable area for structures including signs, and
- g. Reduction or elimination of time limitations.
- h. Renewal of the Special Use Permit.

5. RECORDING OF THE SPECIAL USE PERMIT. After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Dona Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

B. SPECIAL USES ENUMERATED. The following are special uses that may be approved by the Planning and Zoning Commission in accord with the provisions and conditions of this Section. The Planning and Zoning Commission may, at its discretion, impose additional conditions when deemed necessary. Such uses may be approved only within the districts stipulated.

Sec. 38-33G Adult Bookstore/Video Store or Adult Amusement Establishment (M1/M2, and M-3). These uses shall be permitted provided:

1. Such uses are located at a minimum of 1,000 feet from a property line of a:
  - a. school;
  - b. church;
  - c. nursery/day care;
  - d. public park or recreational facility; and
  - e. residential zoning district;
2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and
3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36" x 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

**WARNING:**

**ADULT BOOKSTORE/VIDEO STORE.  
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

or

**WARNING:**

**ADULT AMUSEMENT ESTABLISHMENT.  
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

Sec. 38-33H Airport, Privately and Publicly Owned (C-2, C-3, M1/M2 and M-3). The Las Cruces International Airport (LCIA) property is zoned M-3(Conditional). The condition is that land uses will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

Sec. 38-33J Antennas, Towers, Communication Structures and Other Vertical Structures (All zoning districts). See Section 38-59.

Sec. 38-33E Amusement Park (Permanent)(EE, RE, REM, C-3, MT, M1/M2 and M-3). See Section 38-33E.

Sec. 38-33E Archery and Firing Range, Outdoor (OS-R, C-3, M1/M2, and M-3). See Section 38-33E.

Sec. 38-33G Auto/Truck Full or Self-Service/Automated Wash/Wax/Detailing (CBD). See Section 38-43.

Sec. 38-33G Auto/Truck Repair & Service (CBD). See Section 38-43.

Sec. 38-33A Boarding House (CBD). See Section 38-43.

Sec. 38-33C Brewery and Winery(EE and REM).

Sec. 38-43 Building Height over 50 feet (CBD).

Sec. 38-33A Campground (C-3, and M1/M2). See Section 38-57.

Sec. 38-33D Cemetery/Columbarium (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM and R-1bM). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Group Child Care Home (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM and R-2).

Sec. 38-33E Country Club, Golf Course and/or Driving Range (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). There shall be screening and buffering on property lines abutting residential areas and no structures shall be within fifty (50) feet of a residential property line. The parking areas for these uses shall have access to a collector or higher designated roadway. Country clubs within the OS-R zone shall be designed in concert with a golf course or similar large open area.

Sec. 38-33I Extraction of Raw Materials (Not to include Manufacture, Processing or Treatment) (EE, RE, and REM). Such uses shall be a minimum of four hundred (400) feet from a residential district boundary or from an existing residential property. Uses shall not create a significance nuisance due to noise, odor, pollution, traffic or other similar problems. See Section 38-33I.

Sec. 38-33G Gas Station (CBD). See Section 38-43.

Sec. 38-33A Halfway House (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3 and R-4).

Sec. 38-33H Heliport/Helistop (EE, REM, R-4, O-2, C-2, C-3, M1/M2 and M-3). Use shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

Sec. 38-33C Racetrack, Animal/Rodeo Arena (EE, RE-Mobile, C-3, M1/M2 and M-3)

Sec. 38-33E Racetrack, Auto/Truck (M-3).

Sec. 38-32D Single Business/Use (Non-Center) - Increased Square Footage Above Maximum (C-1 and C-2). Additional square footage not to exceed 2,000 may be granted in the C-1 district. Additional square footage not to exceed 6,000 may be granted in the C-2 district.

Sec. 38-33E Sports Complex/Stadium: Baseball, Football, Soccer, Softball, Track, etc. (EE, REM, C-3, M1/M2, and M-3). Parking and structures shall be located a minimum of three hundred (300) feet from any residential zoning district boundary.

Sec. 38-33J Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

**Sec. 38-55. RESERVED**

**FINDINGS OF FACT:**

1. The Public Involvement Plan and Toolkit for Las Cruces, dated June 2011 was prepared for the Picturing El Paseo project as part of EPA's Smart Growth Implementation Assistance Program. This toolkit identified many outreach and implementation tools to garner a more informed and interactive community. Several of the tools found in the toolkit are implemented either directly or indirectly through departmental policy or the subject draft proposals. Emphasis is in notification of stakeholders so that a more robust participatory environment can result.
2. State Law requiring notification of various planning and development related actions have been in place locally since the New Mexico Session Laws of 1927. Municipalities within New Mexico Must continue to meet at least the minimum standards for notification pursuant to State Statutes.
3. Las Cruces has implemented notification procedures since adoption of the 1930 Las Cruces Zoning Code.
4. The Metropolitan Planning Organization adopted a Public Participation Plan in September of 2008. Said plan also identifies tools and techniques to carry out public notification and engagement.
5. Recent planning initiatives such as Vision 2040, the Camino Real Regional Plan and the Joint Land Use Study all strongly consider measures to inform and engage stakeholders with the respective planning efforts.
6. City Council strongly encourages public participation which requires as a first step, notification of the public as necessary.
7. Two City Council work sessions have been held to solicit commentary and feedback on ways of improving public notification. Those suggestions and information presented by staff are included within the draft proposals.

**City of Las Cruces****Community Development  
Interoffice Memorandum**

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**TO:** Planning and Zoning Commission

**FROM:**  Vincent M. Banegas - Deputy Director, Community Development Department

**DATE:** April 15, 2013

**SUBJECT:** Proposed Amendments to 2001 Las Cruces Zoning Code, as amended and the 2006 Las Cruces Subdivision Code, as amended regarding public notification provisions and minor administrative clean up.

**M-13-103**

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**Case ZCA-13-01:** A request to amend various sections of the 2001 Las Cruces Zoning Code, as amended. The amendments specifically seek to change various provisions related to the public notification process for the various cases processed by the City pursuant to the code. Notification deadlines are proposed to be normalized and methods of notification and procedures for same involving neighborhoods and neighborhood groups/associations are being defined and/or modified. Submitted by the City of Las Cruces.

**Case SA-13-01:** A request to amend various sections of the 2006 Las Cruces Subdivision Code, as amended. The amendments specifically seek to change various provisions related to the public notification process for the various subdivision cases processed by the City pursuant to the code. Notification deadlines are proposed to be normalized and methods of notification and procedures for same involving neighborhood and neighborhood groups/associations are being defined and/or modified. Submitted by the City of Las Cruces.

**SUPPORT INFORMATION:**

- Exhibit "A" - Proposed legislative format draft – various sections 2001 Las Cruces Zoning Code, as amended
- Exhibit "B" - Proposed legislative format draft – 2006 Las Cruces Subdivision Code, as amended

**DISCUSSION/BACKGROUND:**

The two cases under consideration via this packet reflect the results of substantial discussion regarding improvement of the public notification processes within existing planning and development environments. One draft reflects proposed amendments to the 2001 Las Cruces Zoning Code, as amended and the other, proposed amendments to 2006 Las Cruces Subdivision Code, as amended. Both proposals reflect new emerging public notification policy that has been considered and asked for by the City Council. On two separate occasions, the City Council during scheduled work sessions, has heard information regarding both the current practice involving and potential changes to the City's public notification provisions. At the March 26, 2012 work session, staff presented information on all provisions outlined within the current zoning and subdivision codes regarding public notification when cases, plans and/or amendments are prepared for consideration and action by the various recommending and decision making bodies. The provisions in use were also compared to the existing State Statute provisions to reflect how the City is not only meeting statute requirements, but in many regards, exceeding them. It goes without saying that attached to the City Council packet were excerpts from the Planning and Zoning Commission meeting of February 28, 2012 wherein the Commission provided some recommendations on how to improve the public notification process. The recommendation, as you may recall, was to increase the notification threshold for mail out notice, agenda posting, newspaper advertisement, and sign posting on property to a blanket 21 day timeframe. Many questions were raised during the council work session leaving a clear understanding by staff that a more thorough investigation of potential changes for notification improvement was necessary.

As a result of that meeting, staff examined several issues regarding CLC public notification processes. Ultimately, a report entitled *Public Notification and Participation Report and Analysis of Options for a More Informed Community* was generated. This report examined and analyzed various methodologies and strategies for notification and discussed issues pertinent to each and how they might be adjusted to better serve the notification needs for the City. The methods examined both traditional and contemporary methods discussing pros and cons and how they might be adjusted to fit the City's needs. Ultimately, the report was intended to be used by the entire city organization, with each department selecting the methods that could be implemented for their respective operational structure.

To that end, a second draft document which is included in your packet, entitled *Citizen Notification Policy Manual for the CLC Community Development Department*, was prepared. This document is intended to go before the City Council for adoption via resolution and serve as the policy document from which the proposed ordinance changes are drawn. The report examines both traditional and contemporary notification methods and proposes specific changes to the current notification strategies in place for

the activities the department is charged with. Many of the strategies can be incorporated in ordinance form, hence the draft ordinance proposals included via this packet. Some strategies, are better left as policy direction and will be used (assumes approval by City Council) as a means to extend current practices thereby casting a broader notification net to the citizens our actions tend to affect.

On September 24, 2012, the two documents previously mentioned were submitted to Council for discussion. After discussion, Council seemed to reach agreement that the methods proposed should be codified as applicable. To that end, the two draft ordinance changes (zoning and subdivision codes) were prepared and presented at the March 19, 2013 Planning and Commission work session. Upon review and consideration, the Commission felt comfortable with proposed changes and as such, the drafts are now coming to the Commission for final recommendation consideration. Following this action both drafts will go before the City Council for action.

Applicable draft ordinance language is provided in track change format indicating the changes necessary to effect new and modified policy. Language to be added is reflected in underlined text and that which is subject to deletion is reflected in ~~struck~~ text. The margins also provide an indication of where changes are taking place.

#### **STAFF RECOMMENDATION:**

Staff recommends approval of the two cases.

#### **FINDINGS OF FACT:**

1. The Public Involvement Plan and Toolkit for Las Cruces, dated June 2011 was prepared for the Picturing El Paseo project as part of EPA's Smart Growth Implementation Assistance Program. This toolkit identified many outreach and implementation tools to garner a more informed and interactive community. Several of the tools found in the toolkit are implemented either directly or indirectly through departmental policy or the subject draft proposals. Emphasis is in notification of stakeholders so that a more robust participatory environment can result.
2. State Law requiring notification of various planning and development related actions have been in place locally since the New Mexico Session Laws of 1927. Municipalities within New Mexico Must continue to meet at least the minimum standards for notification pursuant to State Statutes.
3. Las Cruces has implemented notification procedures since adoption of the 1930 Las Cruces Zoning Code.

4. The Metropolitan Planning Organization adopted a Public Participation Plan in September of 2008. Said plan also identifies tools and techniques to carry out public notification and engagement.
5. Recent planning initiatives such as Vision 2040, the Camino Real Regional Plan and the Joint Land Use Study all strongly consider measures to inform and engage stakeholders with the respective planning efforts.
6. City Council strongly encourages public participation which requires as a first step, notification of the public as necessary.
7. Two City Council work sessions have been held to solicit commentary and feedback on ways of improving public notification. Those suggestions and information presented by staff are included within the draft proposals.

Exhibit 'A' (pt. 1) - P&Z**ARTICLE II. ADMINISTRATION OF THE ZONING CODE****Sec. 38-10. Planning and Zoning Commission**

- A. CREATED. A Planning and Zoning Commission is created by the City Council with the adoption of this Code. The Planning and Zoning Commission shall review the planning, zoning and platting of the City, investigate any related problems and make recommendations to the City Council.
- B. DUTIES.
1. FINAL ACTION. The Planning and Zoning Commission shall take final action on the following:
    - a. All Special Use Permits, Master Plans (except as part of an annexation request), Subdivisions (except Alternate Summary Plats and Final Plats as defined in the City's Subdivision Code and subdivisions requesting three or more waivers to planning-related issues), and Final Site Plans of Planned Unit Developments (unless the Final Site Plan is submitted with the Concept Plan),
    - b. Within the Infill Areas, all Infill development proposals, and associated variances,
    - c. All variances on property whether stand alone or that require a Special Use Permit or where a Planned Unit Development is proposed,
    - d. All challenges to administrative decisions or interpretations of the Zoning Code, Sign Code, or Landscape provisions of the City Design Standards,
    - e. Appeals of design-related interpretation disagreements between the City staff and the University Avenue Corridor Citizens' Design Review Committee,
    - f. Appeals of City staff decisions on matters associated with the Avenida de Mesilla Gateway Overlay Zone District,
    - g. Appeals of City staff decisions on matters associated with the Lohman Avenue Overlay District, and
    - h. All matters submitted pursuant to Section 3-19-11 NMSA.

Any decision of the Planning and Zoning Commission may be appealed to the City Council in accord with Section 38-13.
  2. RECOMMENDATION TO CITY COUNCIL.
    - a. The Planning and Zoning Commission, with the assistance of City staff and interested persons, shall recommend the Comprehensive Plan to the City Council. In discharging this duty, the Commission shall consult with and coordinate the planning activities of departments and agencies of the City to assist in the development of the Comprehensive Plan. In its planning activities, the Commission shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The Commission shall periodically review the plan and recommend

amendments whenever necessary. The Plan may be prepared and adopted in sections, each of which relates to a major subject of the Plan or to a major geographical section of the City. Before adopting the Comprehensive Plan or any section of amendment of the Plan, the Commission shall hold at least one public hearing. The Comprehensive Plan or any section thereof shall be adopted by a majority of all members of the Commission. A copy of the Plan or of any section or amendment thereof adopted by the Commission shall be sent to the City Council for consideration. Until adopted by the City Council, the Plan shall constitute only the recommendation of the Planning and Zoning Commission.

- b. The Planning and Zoning Commission shall recommend to the City Council approval, denial or modification of all requests for Zoning Code amendments, Sign Code amendments, zone changes, annexations (a master plan that is part of an annexation request), initial zonings, the Concept Plan (and Final Site Plans if submitted with the Concept Plan) of Planned Unit Developments, and associated variances. As noted in Sec. 38-10B.1.b, the Planning and Zoning Commission shall take final action on all requests regarding Infill Parcels.
- c. When the Planning and Zoning Commission recommends denial of any matter on which the City Council takes final action, an appeal to City Council is not required.
- d. Community Development Department staff may make a recommendation, if applicable, on any matter to come before the Planning and Zoning Commission.

### C. PRE-APPLICATION PROCEDURES.

- 1. Development Proposal--Initial Discussion (Annexations, Zone Changes, Variances, Planned Unit Developments and Special Use Permits). Any proposed development related action (as listed herein) causing need for public notification, review and approval by a recognized board, committee, commission or council (excludes design or building permit submittals that may require design review committee consideration) shall first be required to have said proposal reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.
  - (a) Neighborhood group and/or noticed area (property owners within the notification distance) notification determination. Staff upon consideration of the information received during the pre-application meeting, will instruct as

to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

- (i) Development that is likely to cause significant traffic impacts due to limited roadway access or potentially a decrease in level of service based on the subject roadway's design.
  - (ii) Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential.
  - (iii) Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is development consistency with surrounding development styles as they may relate to setback standards, architectural style, etc. An example of a concern not congruent to the criterion is disapproving development on vacant property due to the elimination of "open space" said vacant property provides or development of vacant property because one's view may be compromised.
- (b) Early Notification exception. Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group/noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing concerns raised at said meeting shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood entities prior to consideration by any formal reviewing body.
- (c) Early notification recipients. Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the

outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Early notification shall take place no later than fifteen (15) calendar days prior to the date of submittal. Any party requesting a meeting pursuant to item (d) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

(d) Early notification form and content. All required early notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

- (i) a detailed description of what is being pursued in terms of development
- (ii) information as to how the developer, applicant, or representative for the development action may be contacted
- (iii) a statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur
- (iv) an open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully
- (v) A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated fifteen (15) calendar day threshold. Requests for a meeting within the fifteen (15) calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this fifteen (15) calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.
- (vi) Community Development staff contact information for any related correspondence or general inquiry.

2. Neighborhood group/noticed area meeting. It shall be the responsibility of the applicant or representative for the proposal to conduct the meeting and supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that took place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

DC. APPLICATION PROCEDURES.

Planning and Zoning Commission. Application for all zoning district changes, annexations, initial zonings, special use permits, planned unit developments, Sec. 38-10 variances, and Zoning Code and Sign Code text amendments shall be submitted to the Community Development Department. The submittal requirements for the above-listed requests include, but are not limited to, the following:

- a. Zoning District Changes, Annexations (Refer to Chapter 37, Article IX: Annexations, of the Subdivision Code), Initial Zoning and Sec. 38-10 variances:
  - 1) Official Zoning application and Development Statement,
  - 2) Submittal fee,
  - 3) Notarized affidavit,
  - 4) Copy of property's survey and legal description:  
An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable.
  - 5) Copy of site plan, if applicable:  
The site plan shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:
    - a) Title of site plan.
    - b) Total acreage of site.
    - c) Date of preparation, north arrow, written and graphic scale.
    - d) Identification of site by lot, block, subdivision, if applicable.
    - e) Name and address of property owner.
    - f) Name and address of applicant, if applicable.
    - g) Name and address of consulting firm or representative, if applicable.
    - h) Location and type of all land uses.
    - i) All site improvements with all setbacks indicated.
    - j) Dimensions of all buildings.
    - k) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
    - l) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

- m) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
- n) Where applicable, location and arrangement of all open space, common recreational space, and private open space.
- o) Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:
  - (1) All new development illustrating all exterior building materials and colors.
  - (2) All new development illustrating relationships to neighboring uses, including site lighting.
  - (3) Sign location, materials, color, size, shape, and lighting.
- p) A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, the Planning and Zoning Commission, or the City Council.
- q) Application materials which are illegible and/or otherwise of a low quality will not be accepted.
- r) A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional information before acting on a request. The City Council may require additional information before acting on an appeal.
- 6) Description and justification of requested variances,
- 7) Request and justification to waive submittal requirements, and
- 8) An application that meets the following conditions:
  - a) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the Dona Ana County Clerk's Office.) Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code.
  - b) Any pending litigation or any Final Order entered by any Court of Law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.
  - c) The Community Development Director or designee may reject any application if the ownership of the subject property is not clearly established.

- 9) Copy of notification letter to neighborhood group and/or noticed area and copy of minutes (summary or verbatim) from meeting pursuant to Section 38-10 C. 1. (d) (v).
- b. Special Use Permits and Sec. 38-10 variances: See Sec. 38-54. Also refer to C.a.9. above if applicable.
- c. e.—Planned Unit Developments and Sec. 38-10 variances: See Sec. 38-49.55. Also refer to C.a.9. above if applicable.
- d. Infill Development proposals excluding building permit development pursuant to Section 38-48. Also refer to C.a.9. above as applicable.
- e. University District proposals excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.
- f. Avenida de Mesilla Gateway Zone Overlay District excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.
- g. Airport Overlay Zone District excluding building permit development pursuant to Section 38-46. Also refer to C.a.9. above as applicable.
- h. Lohman Avenue Overlay Zone District excluding building permit development pursuant to Section 38-47. Also refer to C.a.9. above as applicable.
- i. North Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.1. Also refer to C.a.9. above as applicable.
- j. South Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.2. Also refer to C.a.9. above as applicable.
- k. Alameda Depot Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.3. Also refer to C.a.9. above as applicable.
- dl. Zoning Code and Sign Code Text Amendments: Submit fee and a draft of the proposed code text amendment to the Community Development Department. The Community Development Director or designee may require that a proposed text amendment to the Comprehensive Plan, affected Plan element or other affected plans be submitted with the code text amendment.

Submittal requirements may be waived by the Community Development Director or designee. The staff may require more information before processing a request. The

Planning and Zoning Commission and/or the City Council may require additional information and/or require a neighborhood group and/or noticed area meeting at any point in the consideration of the proposal before the affected body before acting on a request and/or appeal.

ED. PUBLIC HEARING AND NOTICE REQUIREMENTS.

1. Public Hearing - The Planning and Zoning Commission shall conduct a public hearing at a regular or special meeting on the following:
  - a. Proposed amendment to the Comprehensive Plan, Plan element, other plans required to be reviewed,
  - b. Proposed amendment to the Zoning Code and Sign Code,
  - c. Zoning district change, with or without conditions,
  - d. Special Use Permit,
  - e. Planned Unit Development,
  - f. Annexation and Initial zoning,
  - h. Variances (See Sec. 38-10G), and
  - i. Infill Development Proposals.
  
2. Agenda - The agenda for Planning and Zoning Commission meetings shall be available no later than fifteen (15)~~six (6)~~ calendar days prior to any meeting.
  
3. Posting - Notice of the public hearing about a request shall be posted in conspicuous places on the property by the property owner, applicant or representative Community Development Department staff at least fifteen (10)(15) calendar days prior to the Planning and Zoning Commission meeting. A sign measuring four (4) feet by four (4) feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the initial reviewing entity and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.
  
4. Notice –
  - a. Notice of the Planning and Zoning Commission public hearing shall be sent by certified mail to all property owners when one city block or less is under consideration for the activities listed, (except zone change-related cases that are recommended to City Council and subdivision related cases, see Section 38-10B2b, where notice shall be sent by regular, non-certified, first class mail), as shown by the records of the County Assessor, within at least two one hundred (2100) feet of the subject property of the proposed request, excluding streets, alleys, channels, canals, railroads, and all other public

rights-of-way. Thereafter, regular, non-certified, first class mail shall be sent to those properties that fall within a distance greater than one hundred (100) feet and no less than five hundred (500) feet of the subject property. The secondary distance of (>= 100' - <= 500') ~~may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. A minimum of fifteen (15) property owners shall be notified even if there are fewer than fifteen within the mandatory 200 foot radius.~~ Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property. Notice shall be mailed at least ~~ten~~fifteen (105) calendar days prior to the required public hearing. Notice of the time and place of the public hearing shall be published at least fifteen (15) calendar days prior to the public hearing in a newspaper of general circulation in the City.

- b. Notice of the City Council public hearing regarding zone change-related easements, cases see Section 38-10B2b, shall be sent by certified and/or regular, first class, non-certified mail as outlined and shall comply with the other requirements of in paragraph E4a.

FE. SPECIAL NOTIFICATION. The Community Development Department shall provide notification, by certified mail, to the Town of Mesilla of all cases presented to the Planning and Zoning Commission. Notification shall be required for only those cases south and west of Interstate Highway 10, north of Union Avenue and east of Motel Boulevard (N.M. State Highway 292). For notification area, see Figure 1: Town of Mesilla Special Notification Area Map at the end of this Article.

GF. ANNEXATION AND INITIAL ZONING.

A petition for annexation shall include an annexation plat, master plan and initial zoning request. Annexation plat, master plan and initial zoning shall be heard as one case, but separate action shall be taken on the annexation plat, master plan and initial zoning. The City Council shall take final action on the annexation plat, master plan and the initial zoning request after the Planning and Zoning Commission provides a timely recommendation. For detailed information about annexation, refer to Chapter 37, Article IX: Annexations, of the Subdivision Code.

G. H—ZONING DISTRICT CHANGES WITHOUT CONDITIONS (Unconditional Zoning).

A zoning district change or rezoning is a change in classification of property. When approved by the City Council and the thirty (30) calendar day appeal period has expired, the zoning district change shall be recorded and shown on the appropriate zoning district map within the "Official Zoning District Atlas." Approved initial zoning shall be shown on the appropriate zoning district map within the Official Zoning District Atlas. Special Use Permits shall not be considered a zoning district change. No condition that restricts the use of land beyond that otherwise provided by district provisions shall be concurrently imposed with the approval of a zoning district change, except as outlined in Sec. 38-10H. However, a variance may be recommended by the Planning and Zoning Commission and granted by the City Council as part of a zoning district change request.

H. ZONING DISTRICT CHANGES WITH CONDITIONS (Conditional Zoning).

1. AUTHORIZATION. Zoning district changes may be approved subject to one or more conditions that restrict the use of land beyond that otherwise provided by the district. Variances may be recommended by the Planning and Zoning Commission and granted by the City Council as part of conditional zoning consideration.
2. PURPOSE AND INTENT. A rezoning subject to a condition is to be used only in circumstances where the proposed change of district is appropriate to allow certain uses which are in accordance with the Comprehensive Plan, and which are not incompatible with the surrounding neighborhood.
3. SCOPE. It shall be unlawful to utilize, sell, or lease property rezoned with conditions without first providing to any prospective buyer or lessee a disclosure statement stipulating the conditions and the time limitation prescribed, if any, and without filing a copy of said disclosure with the office of the Doña Ana County Clerk. A condition attached to a zoning district change shall be consistent with the goals, objectives and policies of the Comprehensive Plan, Plan elements or other plans adopted by the City Council and may
  - a. Limit the use of property affected so that one or more of the uses which would otherwise be permitted in the district being adopted shall not be permitted in the specific district as conditioned, and/or
  - b. Require compliance with such design standards or time limitations relating to the construction, placement and size of buildings, landscaping, streets, roadways, pathways, utilities, drainage ways, and other site design features as may be necessary to protect the community from the impact of future development.
4. LIMITATION ON USING CONDITIONAL ZONING. Any use or structure that requires a Special Use Permit under Sec. 38-54 shall not be permitted by using conditional zoning.

5. INITIATION OF CONDITIONAL ZONING. Conditional Zoning may be initiated by the Community Development Director or designee, the Planning and Zoning Commission, City Council, or by the applicant. Requests shall specify those uses, site design features, time limitations, or other conditions for the conditional zoning.
6. PLANNING AND ZONING COMMISSION ACTIONS. The Planning and Zoning Commission shall follow procedures specified in this Section when acting on proposed zoning district changes with conditions. The Planning and Zoning Commission may consider and take action on all aspects of the proposed conditions and limitations. The substance of all proposals, site plans, and other pertinent information with regard to conditional zoning shall be made a permanent part of the action recommending approval of said conditional zoning.
7. AMENDMENT OF OFFICIAL ZONING DISTRICT ATLAS. The Official Zoning District Atlas shall be amended as necessary to reflect the existence of zoning changes with conditions. Areas affected by conditions shall be identified by the use of the suffix "C" and shall be clearly distinguished from areas in like zoning district that are not subject to special limiting conditions. The action creating a district subject to conditions and a copy of all conditions shall be available in the Community Development Department as a supplement to the Official Zoning District Atlas.
8. CONDITIONAL ZONING CONTROL. Conditions attached to a zoning district change shall govern over any less restrictive zoning regulations unless specifically provided otherwise. All other regulations not specifically affected by a condition shall apply in the same manner as if the property were not subject to conditions.
9. REVOCATION OF CONDITIONAL ZONING DESIGNATION. A conditional zoning designation shall be revoked and revert to the previous zoning district designation if the designated property is not used or developed in accordance with the conditions and all other applicable regulations within two (2) years from the date of City Council approval. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate. When the only conditions placed upon a zoning designation are prohibitions (such as No billboards allowed or No medical offices allowed), the conditions shall run with the land and shall not be subject to the two (2) year development window previously stated. Furthermore, these prohibitive conditions shall only be removed if until the property is either used in a fashion contrary to the stated prohibition or a re-zoning action causes the condition to be removed. If compliance with used contrary to the "non-prohibitive" conditions are not made whole, the property shall revert back to the prior designation unless the Community Development Director or designee certifies in writing that remedial action can bring about compliance with approved conditions in a timely fashion. Reversion shall cause the use of the property to follow appropriate zoning requirements as applicable. When conditions speak to performance criteria (i.e. requirement for opaque screen along north property line or height limitations

established, etc.) upon development, conversion of property or expectation thereof.  
the two (2) year revocation period shall apply.

JF. VARIANCES. The Planning and Zoning Commission and the Public Works Director or designee (See Sec. 38-10I.1) are authorized to grant variances.

1. A variance shall be defined as a variation in the numerical requirements of this Code, the Sign Code, or the Design Standards (landscaping). Numerical variances to the clear sight triangle requirements shall be considered, reviewed, denied, or approved by the Public Works Director or designee, as per Article III of Chapter 26.
2. A variance proposal to be acted on by the Planning and Zoning Commission may either be part of a request for rezoning, initial zoning, special use permit or planned unit development, or be submitted independent of such proposals and heard based on the individual merits of the request. Use variances, which are non-numerical, as well as numerical variances to the provisions of this Code, may be granted by the Planning and Zoning Commission only in accordance with the Infill Development Process (IDP), Sec. 38-48. Administrative decisions on or interpretations of the Zoning Code or the Sign Code by staff may be affirmed, reversed, or modified pursuant to this section and appealed to the City Council in accord with Sec. 38-13, except as provided in Sec. 38-4D.
3. In the event of a denial decision by the Planning and Zoning Commission and/or City Council, there shall be no reapplication for the exact same variance, which was properly advertised and acted on, for a period of one (1) year after the date of the decision of the Planning and Zoning Commission and/or City Council. A modified variance request processed through the IDP, Sec. 38-48, may be resubmitted at any time following action by the Planning and Zoning Commission.
4. A variance shall be automatically revoked if a building permit, sign permit or business registration/license for the approved variance has not been obtained within one (1) year. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate.

KJ. CRITERIA FOR DECISIONS.

The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the Comprehensive Plan, Plan elements, other applicable plans, and the purpose and intent of this Code, Sec. 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Members of the Planning and Zoning Commission shall state the factual basis and the findings for their vote.

Furthermore, granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief in order to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary. In addition to criteria already referenced, decisions may consider:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question.
2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.
3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

| LK. NOTICE OF DECISION.

Upon making a recommendation to the City Council or taking final action on matters for which the Planning and Zoning Commission has been granted final authority, the Community Development Department shall promptly

1. Prepare a written decision that includes an order stating the factual basis and the findings of the Planning and Zoning Commission which support the order
  - a. Recommending the granting or denying of relief, or
  - b. Granting or denying relief;
2. File the written decision with the City Clerk's Office;
3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the Planning and Zoning Commission to all parties whose rights are adjudged by the decision and that contains the requirements for filing an appeal;
4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the Planning and Zoning Commission to every person who has filed a written request with the Community Development Department for notice of the decision.

| LM. APPEAL TO CITY COUNCIL.

Decisions of the Planning and Zoning Commission may be appealed to the City Council in accord with the provisions of Sec. 38-13.

| NM. RESUBMITTAL OF REQUEST.

A request denied by the Planning and Zoning Commission and/or the City Council shall not be resubmitted or reconsidered for a period of one (1) year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six (6) months after such denial decision. Special use permits or planned unit developments processed through the IDP that are denied by the Planning and Zoning Commission may be modified and resubmitted at any time following action by the Planning and Zoning Commission.

**Sec. 38-11. Reserved****Sec. 38-12. Reserved****Sec. 38-13. City Council**

- A. FINAL ACTION. After recommendation from Community Development Department staff, if applicable, and the Planning and Zoning Commission, the City Council shall take final action on the following:
1. Comprehensive Plan, Plan elements, other plans sent from the Planning and Zoning Commission and all amendments,
  2. Zoning district change requests,
  3. Initial zoning requests,
  4. Concept Plan and Final Site Plans submitted with the Concept Plan of Planned Unit Developments (subdivisions requesting three or more waivers to planning-related issues become planned unit developments),
  5. Associated variances with A.2 through A.4 above,
  6. Zoning Code and Sign Code amendments, and
  7. Appeals of decisions of the Planning and Zoning Commission.
- B. CHANGING AND RECONSIDERATION OF PETITIONED ZONING PROPOSALS. A zoning district change or initial zoning request may be amended by the City Council to be more restrictive. Such amendment and reconsideration shall not require readvertisement or notice to surrounding property owners if considered by the City Council at the original (first) Public Hearing. Subsequent public hearings shall require readvertisement and notice to surrounding property owners unless the hearing is continued or the request is postponed to a specific date.
- C. GROUND FOR APPEAL TO CITY COUNCIL. Any person, or any department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code, or any other resolution, rule or regulation adopted pursuant to Sections 3-21-1 through 3-21-12 and 3-21A New Mexico State Statutes Annotated, 1978 Compilation, may appeal such decision to the City Council. Such appeal must be initiated in writing within fifteen (15) calendar days after the decision and after all other procedures established by this Code have been exhausted. Any person that is a party to an appeal may request a "Battershell" due process proceeding in place of the automatic standard due process.
- D. STAY OF PROCEEDINGS. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee, or board from whom the appeal is taken certifies that by reason of facts a stay would cause imminent peril of life and property. Upon certification, the proceedings shall not be stayed except by order of District Court after notice to the official, commission, committee, or board from whom the appeal is taken.

- E. APPELLANT RESPONSIBILITY IN APPEALS. All appellants under this Section are required to submit to the Community Development Department a detailed written statement of the grounds of their appeal, including findings, no later than fifteen (15) calendar days after the decision is filed with the City Clerk's Office. The appeal shall state all issues to be considered. Only the issues stated shall be considered during the applicable proceeding.
- F. APPEAL NOTICE. Notice on all appeals, except Zoning and Sign Code amendments and interpretations, on decisions of the Planning and Zoning Commission shall be sent in complete accordance with Section 38-10, E. 4. a. With the exception of subdivision related matters, the specified exclusion referencing Section 38-10 B. 2. b. shall not apply for appeals under this section. ~~by certified mail to all property owners, as shown on the records of the County Assessor, within two hundred (200) feet of the area of the proposed change, excluding streets, alleys, channels, canals, other public rights of way and railroad rights of way. A minimum of fifteen (15) property owners shall be notified even if there are fewer than fifteen within the mandatory 200 foot radius. Notice to said property owners shall be mailed at least ten (10) calendar days prior to the meeting. Notice of the time and place of the meeting shall be published in a newspaper of general circulation in the City at least fifteen (15) calendar days prior to the meeting. Notice of the time and place of the appeal shall be posted in conspicuous places on the property by Community Development Department staff at least ten-fifteen (105) calendar days prior to the appeal public hearing.~~
- G. AUTHORITY OF THE CITY COUNCIL. When an appeal alleges that there is error in ~~any order, requirement, decision or determination by an administrative official, commission, committee, or board in the enforcement of this ordinance, or any other resolution, rule or regulation adopted pursuant to the above stated State Statutes, the City Council, by a majority vote of all its members may, after all other procedures established by the provisions of this Code have been exhausted, reverse or affirm any order, requirement, decision or determination of an administrative official, commission, committee or board; or make any change in an order, requirement, decision, or determination of an administrative official, commission, board, or committee.~~
- Members of the Planning and Zoning Commission shall not participate in any way in an appeal before the City Council of any decision of their Commission. The minutes of each Commission meeting are the public record that indicates each Commission member's participation. This restriction applies to members of other groups or committees, e.g., University Avenue Corridor Citizens' Design Review Committee, when the group or committee is required to make a recommendation to the Planning and Zoning Commission.
- H. NOTICE OF DECISION. Upon City Council making any final decision, the Community Development Department shall promptly
1. Prepare a written decision that includes an order stating the factual basis and the findings of the City Council which support the order;
  2. File the written decision with the City Clerk's Office;

3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the City Council to all parties to the appeal submitted to the City Council, including persons who had filed a formal protest as an aggrieved person, and that contains the requirements for filing an appeal;
4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the City Council to every person who has filed a written request with the City Clerk for notice of the decision.

I. AMENDMENT, REPEAL, AND REVIEW OF THE ZONING CODE.

1. The City Council, after a public hearing and after a recommendation from the Planning and Zoning Commission, may amend, supplement, or repeal any portion or all of this Code.
2. There shall be a continuous evaluation of the provisions of this Code, and amendments shall be submitted to the City Council as deemed necessary.

**Sec. 38-14. Appeal to District Court**

Any person dissatisfied with an order or determination of the Planning and Zoning Commission, after review of the order or determination by City Council; may commence an appeal in District Court pursuant to the provisions of Section 12-8A-1 NMSA 1978, as amended, and Section 39-3-1.1 NMSA 1998, as amended.

Any person aggrieved by a determination of the City Council may appeal to the District Court within thirty (30) calendar days after the final decision of the City Council has been filed with the City Clerk's Office.

**Sec. 38-15. Violations of the Zoning Code**

- A. VIOLATIONS. It shall be a violation of this Code for any person, firm, or corporation to neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any requirement pursuant thereto, or in any way use, change, or construct a building or structure in non-conformance with zoning approval. Each day that such violation exists shall constitute a separate offense. Any violation herein described is governed by the provisions of the Las Cruces Municipal Code and its subsequent amendments.
- B. PENALTIES. The Las Cruces Municipal Court shall impose the penalties for each day the violation of this Code exists. In addition to fines, the Las Cruces Municipal Court may grant injunctive relief in accordance with the provisions of the Las Cruces Municipal Code and its amendments.
- C. OTHER REMEDIES. Nothing herein shall limit the City from seeking other remedies at law or equity to enforce the Zoning Code. Violations of this Code shall be brought into compliance, abated, removed, and/or pursued in the applicable court of law. In all such cases that the Court rules to allow non-conformance with this Code, there shall be a pro forma action by the Planning and Zoning Commission permitting such non-conformance. Such action shall be consistent with the Court's ruling, and thereafter said non-

conformance shall be considered legal non-conforming and be subject to the provisions thereof.

**Sec. 38-16. Enforcement Provisions**

- A. DUTY TO ENFORCE. The official(s) designated by the City Manager shall enforce this Code.
- B. BUILDING PERMITS AND PLANS. No building or structure, except those exempted by the City's Building Code, shall be erected, enlarged, or structurally altered until a building permit has been issued and zoning approval of all plans has been granted by the Community Development Director or designee.
- C. CERTIFICATE OF OCCUPANCY. Certificate of Occupancy approving a structure or use of land shall be required for all of the following prior to occupancy:
1. Occupancy and use of a building hereafter erected or structurally altered;
  2. Change in use of an existing building to a use of a different classification;
  3. Occupancy and use of vacant land;
  4. Change in the use of land to use of a different zoning district classification;
  5. Change in the use of a non-conforming use, including the alteration or expansion of a non-conforming use or structure.
- D. LEGAL DOCUMENTS TO INSURE COMPLIANCE. The Community Development Director or designee may require affidavits, disclosure statements, deed restrictions, or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

**Sec. 38-17. Fees**

All fees relating to this Code shall be adopted by resolution of the City Council.

**Sec. 38-18 -- 38-19. Reserved.**

**Figure 1: Town of Mesilla Special Notification Area, see page 14**

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy auditing of the accounts.

In the second section, the author outlines the various methods used to collect and analyze data. This includes both primary and secondary research techniques. The goal is to gather comprehensive information that can be used to identify trends and make informed decisions.

The third section provides a detailed overview of the results obtained from the data analysis. It highlights key findings and discusses their implications for the organization. The author notes that while there are some challenges, the overall outlook is positive, provided that certain strategic actions are taken.

Finally, the document concludes with a series of recommendations for future work. These suggestions are based on the insights gained from the current study and are intended to help the organization improve its performance and achieve its long-term goals.

Exhibit 'A' pt. 2 – P&Z**Sec. 38-49. PUD - Planned Unit Development****A. PURPOSES.**

The purposes of planned unit developments (PUD) are to:

- (1) Comply with Growth Management Policy as established in the Land Use Element, other applicable elements and all companion documents to the Comprehensive Plan.
- (2) Produce more flexibility in development than would result from a strict application of this Code.
- (3) Permit design flexibility that will encourage a more creative approach to the development of land and that will result in more efficient and aesthetically desirable alternatives to the housing and other development needs of the community.
- (4) Permit flexibility in land use, density, placement of buildings, arrangement of open space, circulation facilities, and off-street parking areas, and maximize the potential of individual sites under development.
- (5) Promote the infill of vacant land.
- (6) Create developments that balance the benefits to the community with the developer's interests.

**B. GENERAL PROVISIONS.**

- (1) The PUD process shall be required for those proposed developments that are to be subdivided and multi-phased and that request three (3) or more deviations to planning-related minimum development standards, e.g., setbacks. An applicant whose proposed development is not required to follow the PUD process may request to use the PUD process.
- (2) The Infill Development Process (IDP) described in Section 38-48 authorizes the Planning and Zoning Commission to take final action on PUD's. However, proposed development in Infill Areas is not required to use the PUD process, but may use the Infill Development Process.
- (3) Proposed deviations to engineering standards, e.g., street construction standards, will be acted on by the Public Works Department Director or designee with appeal to the Engineering Review Committee. However, the PUD process shall not be used if only deviations to engineering standards are proposed.
- (4) A developer shall not be granted a deviation to planning-related minimum standards (private incentive) without providing a public benefit to the City/community. The Land Use Element of the City's Comprehensive Plan provides guidance in determining appropriate public benefits in relation to private incentives. One or more public benefits are to be provided for each private incentive. For example, the private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

- (5) A PUD may be used to correct any legal nonconforming situation. However, a PUD shall not be used to make an illegal situation legal.
- (6) All contiguous property owned or legally controlled by the developer shall be included within the PUD.

### C. SPECIFIC PROVISIONS.

A Planned Unit Development shall meet minimum development standards. The existing development standards, e.g., Zoning Code requirements, shall be met, or minimum development standards, as proposed by the applicant, and approved as part of the PUD, shall be met. The applicant shall clearly describe the PUD in terms of all of the following specific provisions. In addition, the Community Development Director or designee may recommend conditions and the Planning and Zoning Commission or the City Council may impose conditions and require compliance with such other standards as deemed necessary.

- (1) Land Use. A PUD may contain any land use or combination of land uses.
- (2) Location. A PUD may be located anywhere within the City except within the University Avenue Corridor Plan Overlay Zone District. However, the PUD process shall not be used to circumvent the requirements of any overlay zoning district.
- (3) Size. There is no acreage minimum or maximum.
- (4) Density. There is no minimum or maximum number of dwelling units per acre.
- (5) Intensity. There is no minimum or maximum square footage requirement for nonresidential uses.
- (6) Off-Site Roadway and Intersection Improvements. Contributions to or the provision of off-site roadway and intersection improvements shall be required based on the proportionate share of the PUD's impact on off-site roadway segments and intersections. Off-site roadway and intersection improvements necessary in whole or in part because of the PUD's impacts shall be provided according to the improvements schedule outlined in the required traffic impact analysis called for in the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element of the Comprehensive Plan). Furthermore, improvements shall be consistent with Growth Management policy of the Land Use Element.
- (7) Architecture. PUD architecture shall be compatible with and enhance the existing architecture on adjacent property.
- (8) Design. The City may alter the design of the proposed PUD to insure the public health, safety, and welfare.

- (9) Context. The City may alter the proposed PUD to insure compatibility with existing and potential land uses adjacent to the proposed PUD.
- (10) Antennas, Towers, Communication Structures, and Other Vertical Structures. See Section 38-59.
- (11) Height. See Section 38-31D and Section 38-32D.
- (12) Landscaping. See Chapter 32 of the Municipal Code.
- (13) Mobile Home Parks/Recreational Vehicle Parks. See Section 38-57.
- (14) Open Space. See Chapter 32 of the Municipal Code.
- (15) Off-Street Parking. See Section 38-58.
- (16) Roadway Access. See Chapter 26, Article III, Access and Median Cuts. The proposed PUD shall be accessed by at least one paved roadway (meeting the City of Las Cruces Standard Specifications for Road Construction) within the minimum right-of-way for the roadway width having the capacity necessary to serve the first phase of the PUD. Additional access may be required before other phases of the PUD are allowed to proceed.
- (17) Setbacks/Bufferyards/Screens. (See Matrix 1 at the end of this section)
- (18) Signage. See Chapter 36 of the Municipal Code.
- (19) Walls and Fences. See Section 38-60.
- (20) Accessory Uses and Structures. See Section 38-51.
- (21) Private Incentives/Public Benefits. For each private incentive (deviation to existing Municipal Code planning-related minimum standards listed above) requested, one or more public benefits shall be provided. For example, a private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

D. REVIEW PROCEDURES.

- (a) Authorization. A Planned Unit Development (PUD) is a zoning district change and is not permitted by right in any zoning district. The procedures and requirements in this Article shall govern the development of a PUD.

For each PUD, there shall be a Pre-Application Conference, Concept Plan, one or more Final Site Plans and, if required, one or more Final Plats. The following table summarizes actions to be taken on a PUD:

	<u>Staff</u>	<u>P &amp; Z</u>	<u>City Council</u>
Pre-App. Conf.	R		
Concept Plan	R	R (FA*)	FA (A*)
Final Site Plan	R	FA (R**)	A (FA**)
Final Plat***	FA	A	A

Recommendation (R), Final Action (FA), and Appeal (A)

- \* The Planning and Zoning Commission is authorized to take final action using the Infill Development Process within Infill Areas.
- \*\* The City Council shall take final action on final site plans when one or more is submitted along with the Concept Plan.
- \*\*\* A Final Plat may not be required in every case.

- (b) Pre-Application Conference. ~~Any proposed PUD shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. Before an application for a PUD may be submitted, the applicant shall meet with the City Community Development Department staff to review the proposed project. This meeting does not require a written application or fee. Based on the information made available before or at the pre application conference by the applicant, the staff shall review the development proposal and advise the applicant concerning the compatibility of the proposal with the intent, goals, objectives, policies and standards of all City plans and codes. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.~~

- (c) Concept Plan Review.

(1) Concept Plan Application

The Concept Plan is similar to, and replaces, a subdivision master plan in that it is intended to serve as a tool that can assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD.

The Concept Plan and supplemental material shall be submitted to the Community Development Department no later than sixty (60) calendar days prior

to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Section 38-49E, the Community Development Department shall issue a receipt for submittal. A Concept Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Concept Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The Community Development Director or designee may waive any submittal requirement. However, after reviewing the Concept Plan, the Community Development Director or designee, the Planning and Zoning Commission and/or the City Council may require additional items and resulting information in addition to the submittal requirements as per Section 38-49E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. ~~other information in addition to the submittal requirements as per Section 38-49E.~~ Additional ~~information requests~~ requested by staff shall be justified in writing.

A written staff report with recommendations shall be provided to the Planning and Zoning Commission along with the Concept Plan. The report shall recommend that the Concept Plan be approved, conditionally approved, disapproved, or postponed.

(2) Concept Plan Public Hearing(s)

Public hearing and notice requirements shall be in accord with provisions of Section 38-10. The applicant or applicant's representative shall be present at the public hearing for the proposal to be considered. If the applicant or representative is not at the public hearing, the Concept Plan shall be postponed until the next regular Planning and Zoning Commission meeting or City Council meeting.

The Planning and Zoning Commission shall review the Concept Plan, staff report, applicant presentation, and information submitted by interested citizens. Action by the Planning and Zoning Commission shall be a recommendation to the City Council for approval, conditional approval, or disapproval. The Planning and Zoning Commission is authorized to take final action on a PUD using the Infill Development Process within Infill Areas. An Official Notification of Decision that describes the decision of the Planning and Zoning Commission and/or City Council shall be furnished to the applicant in compliance with State law.

The Concept Plan may be approved only if it includes the following findings:

- a. The proposed construction and use of the PUD will not be detrimental to the health, safety, or welfare of the community or adjacent neighborhood;
- b. There is or will be adequate sewage capacity, roadway capacity, energy supply, and potable water supply to serve the PUD at the time a certificate of occupancy or letter of acceptance, as applicable, is to be issued;
- c. The PUD conforms to the intent, goals, objectives, policies, and standards of all City plans and codes;

- d. The uses proposed, including their density and intensity, are appropriate to the character of the neighborhood and will have a positive aesthetic effect on the neighborhood in which the PUD will be located; and
- e. The proposed uses will not subject surrounding properties and pedestrians to significant hazardous traffic conditions.

Final approval may be granted subject to compliance with such conditions required by the Planning and Zoning Commission and/or the City Council. The conditions that the Planning and Zoning Commission and/or City Council find necessary shall be made part of the terms under which the PUD is granted. The Planning and Zoning Commission and/or the City Council may require such conditions to be included as covenants or deed restrictions in any subsequent conveyances of PUD property. Such covenants and deed restrictions shall be properly recorded with the Dona Ana County Clerk. Furthermore, the Planning and Zoning Commission and/or City Council may require that all or part of any utility corridor, roadway, walkway, bike facility, park, playground, or other public area shown on the Concept Plan be dedicated for public use as an easement, right-of-way, or other conveyance.

If the Concept Plan is approved or conditionally approved by the Planning and Zoning Commission and/or the City Council, the PUD shall be shown on the Official Zoning District Map as PUD replacing the existing zoning districts.

### (3) Concept Plan Effective Period

The approval of the Concept Plan shall be effective for a period of five (5) years. If a Final Site Plan for all or part of the area has not been approved by the Planning and Zoning Commission and/or City Council by the expiration of the five (5) year period, the Concept Plan approval shall expire. The zoning of the property shall automatically revert to the underlying zoning districts that existed for the property at the time the Concept Plan was approved. Prior to the expiration date, the staff may approve a request for an extension of time of up to two (2) years. After the first time extension, the Planning and Zoning Commission and/or City Council shall consider any other time extension request. When at least one Final Site Plan has been approved, the Concept Plan shall remain effective until amended.

### (4) Concept Plan Amendment

Any substantial change proposed that would affect the approved Concept Plan shall require re-submittal of the Concept Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes to the Concept Plan are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

- a. Any change that would increase the intensity of the land uses;

- b. Fifteen (15) percent cumulative increase in vehicular traffic to any roadway segment or intersection;
- c. Fifteen (15) percent cumulative increase in residential density;
- d. Fifteen (15) percent cumulative increase in nonresidential square footage;
- e. Any change in private incentives and public benefits;
- f. Increase in size of property;
- g. Any reduction in screening, bufferyards and setbacks at the PUD property line;
- h. Fifteen (15) percent cumulative increase in the buildable area for structures including signs; and
- i. Fifteen (15) percent cumulative reduction in open space.

(d) Final Site Plan Review.

(1) Final Site Plan Application, Public Hearing and Effective Period

A Final Site Plan shall substitute for a subdivision preliminary plat when an applicant must otherwise comply with the subdivision requirements. Upon approval of the Concept Plan, the applicant may submit a Final Site Plan for part or all of the land area covered by a Concept Plan for Planning and Zoning Commission consideration. However, an applicant may submit a Final Site Plan along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.

The Final Site Plan and supplemental material shall be submitted to the Community Development Department no later than sixty (60) calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Section 38-49E, the Community Development Department shall issue a receipt for submittal. A Final Site Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Final Site Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The staff may waive any submittal requirement. However, after reviewing the Final Site Plan, the Planning and Zoning Commission and or the City Council may require additional items and resulting other information in addition to the submittal requirements as per Section 38-49E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing.

A written staff report with recommendations about the Final Site Plan shall be provided to the Planning and Zoning Commission along with the Final Site Plan. The report shall recommend that the Final Site Plan be approved, conditionally approved, disapproved, or postponed.

The review procedures for the Final Site Plan shall be the same as for the Concept Plan except that:

- a. The Planning and Zoning Commission shall take final action instead of the City Council unless a Final Site Plan has been submitted along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.
- b. No findings are required except that the Final Site Plan conforms to the Concept Plan.
- c. A Final Site Plan shall be effective for two (2) years from the date of approval. When at least one Final Plat or at least one Building Permit has been approved, the Final Site Plan shall be effective until amended.

Approval of a Final Site Plan shall not constitute approval of a Final Plat when a Final Plat is required. Such approval shall constitute the permission to prepare and submit a Final Plat for part or all of the land area covered by the Final Site Plan and construction drawings of all improvements for the Final Site Plan land area. Final platting shall not be considered until a Final Site Plan is approved. If a Final Plat is not required, an approved Final Site Plan shall allow for a building permit to be issued that is in compliance with Chapter 30, Buildings and Building Regulations. Notation on documents shall clearly indicate that the project receiving the building permit is part of a PUD and is subject to the approved Concept Plan and approved Final Site Plan.

In granting approval of a Final Site Plan, the Planning and Zoning Commission shall require adequate guarantees of compliance with all conditions of approval. Such guarantees may include, but are not limited to, performance bonds, lien agreements, or escrow deposits in an amount sufficient to ensure compliance. Moreover, the construction of a PUD following approval of a Final Site Plan shall be in accordance with the Concept Plan and Final Site Plan conditions. Failure to comply with such conditions and standards shall be deemed a violation of this Code.

## (2) Final Site Plan Amendment

Any substantial change proposed that would affect the approved Final Site Plan shall require re-submittal of the Final Site Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

- a. Increased drainage impact;
- b. Change in location and size of utilities and easements;

- c. Change in required, specific landscape features such as buffers, screens and setbacks at the PUD property line;
- d. Change in proposed roadways above major local class;
- e. Change in structure location, including signs, by more than five (5) feet; and
- f. Change in architectural style or character.

(e) Final Plat Review and Contents.

If required, the Final Plat(s) review procedures and contents shall comply with Article IV of Chapter 37, the City's Subdivision Code.

E. SUBMITTAL REQUIREMENTS.

- (a) Concept Plan Submittal Requirements. A request for review of a Concept Plan shall include the following information:
- (1) Official Application and Development Statement
  - (2) Submittal Fee
  - (3) Waiver request and justification to delete submittal information, if applicable.
  - (4) Descriptions of deviations to planning-related development standards and the public benefits to be provided.
  - (5) Association by-laws (may be submitted with each Final Site Plan.)
  - (6) Concept Plan. The following information shall be provided on the Concept Plan and supporting maps and drawings:
    - a. Name of Concept Plan.
    - b. Name, address and telephone number(s) of property owner(s), developer(s) and consultant(s) preparing the Concept Plan.
    - c. Detailed area map showing the surrounding area within a half mile and the PUD in relationship to adjacent parcels, existing roadways, and natural or man made features that may impact or be impacted by the PUD.
    - d. North arrow, date of preparation, and written and graphic scale.
    - e. Legal description.
    - f. Boundary lines of Concept Plan area with approximate length of lines and boundary lines of phases.
    - g. For each lot, parcel, or tract, list proposed land uses and acreage and show building area boundaries within which each structure will be located:
      - 1. Maximum number of dwelling units and maximum density.
      - 2. Maximum square footage of nonresidential uses.
    - h. Proposed screening and bufferyard/setback distances along the PUD property line.
    - i. Existing land uses and zoning on adjacent lots, parcels, or tracts.
    - j. Name of adjacent subdivisions (including the filing date, book and page numbers), property owners, and zoning. If not subdivided, name of property owner.
    - k. Twenty foot (20) contour intervals minimum or as appropriate.

1. Proposed alignment of roadways and how they relate to the Metropolitan Planning Organization (MPO) Transportation Plan and the Transportation Element of the Comprehensive Plan and the impacts created on the area road network, neighborhood, and other land uses. Impact data shall include the anticipated traffic volume generated by the proposed development, identification of the affected road network, and the additional traffic volumes associated for each road. If required, provide a Traffic Impact Study, including a roadway improvement schedule, consistent with the requirements of the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element) and based on the latest recommendations from the Institute of Traffic Engineers. Thoroughfare System: Identification of adjacent roadways and other transportation lines by functional classification; proposed location, length, width of all roadways, bikeways, trails, walkways, and any other transportation lines. Identify existing and proposed classification of roadways as per City of Las Cruces Design Standards and based on the current Las Cruces MPO Transportation Plan and the Transportation Element of the Comprehensive Plan.
  - m. Location and sizes of existing and proposed utilities.
  - n. Significant natural features, such as arroyos and 100-year flood plains.
  - o. All easements.
  - p. Tabular Information:
    1. Land uses of each lot, parcel, or tract.
    2. Total acreage of the PUD, acreage for each land use, and acreage of each land use by phase.
    3. Maximum number of dwelling units and maximum density by phase.
    4. Total square footage of nonresidential uses by phase.
    5. Total acreage for open space, private and public facilities, and right-of-way.
    6. Maximum height of proposed structures for each lot, parcel or tract.
  - q. Approval block signifying the final approved Concept Plan to be signed by the Zoning Administrator upon approval by the City Council and resolution of all outstanding staff comments.
- (7) Other Impact Studies, if required by the Planning and Zoning Commission, are to be submitted prior to City Council consideration:
- a. Impacts on any public facilities outside the PUD area. Impact data shall include expected population generated by the proposed development, identification of public facilities, e.g., utilities, parks, that are anticipated for use by said population and level of capacity of said utilized public facilities.
  - b. Impacts on air quality, specifically solid particulates known as PM10. (Small airborne particulates, particulate matter less than or equal to 10 microns in diameter, are an important health concern because they are far more likely than larger particles to be inhaled deep into the lungs. This particulate matter is a respiratory irritant, can aggravate asthma and other lung diseases, and act as a medium of transport that allows the body to

absorb heavy metals through oxidation. These small, suspended particulates also play some role in obscuring light, thus degrading visibility.) Impact data shall include identification of proposed uses that generate air pollution substances into the environment and the projected impact.

- c. Impacts on views and noise to adjacent property. Impact data shall include identification of proposed uses that generate excessive noise, anticipated maximum height for proposed structures, identification of existing physical features that are viewed from the PUD and adjacent properties, and how these views will be altered by the PUD. Proposals to mitigate impacts shall be provided.
- d. Geological and Soils Hazards: Report on the Geologic and Soils Hazards in relation to slope conditions, drainage problems and suitability for septic system use, if applicable, as identified by the Soil Survey of Dona Ana County Area, New Mexico. This report shall also include either an aerial photograph or a map with existing contours at an appropriate interval to establish accurate ground contour of the PUD area.

(8) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minuts (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

(b) Final Site Plan Submittal Requirements. A request for review of a Final Site Plan (FSP) shall include the following information:

- (1) Official Application and Development Statement
- (2) Submittal Fee
- (3) Waiver request and justification to delete submittal information if applicable.
- (4) Master Drainage Study consistent with Section 37-81 of the Subdivision Code and Article III, Drainage, of the City Design Standards.
- (5) Master Utilities Report and Plan consistent with Section 37-81 of the Subdivision Code.
- (6) A Final Site Plan. A FSP shall be at a scale that adequately represents the required information. A FSP shall be prepared on 18" x 24" sheets of paper. Copies shall be legible with no limit to the number of sheets provided. A FSP and supporting maps and drawings shall show existing conditions and all proposals, including the following:
  - a. Name of the FSP.
  - b. Total acreage of the FSP area to the nearest 1/10 of an acre.
  - c. Date of preparation, north arrow, written and graphic scale.
  - d. Vicinity Map to locate the FSP within the Concept Plan area. The Vicinity Map shall show relationship to existing major roadways.
  - e. Name and address of applicant.
  - f. Name and address of the person, corporation, or organization preparing the FSP.
  - g. Number to identify each lot. Letter of the alphabet to identify each tract or parcel.
  - h. Proposed lot lines and right-of-way lines; rights-of-way and street widths; rights-of-way and easement widths for public services or utilities and any limitations thereof.

- i. Dimensions, acreage, and purposes of tracts or parcels.
- j. Sites and acreage for any multi-family dwellings or nonresidential uses.
- k. Dimension of all buildings, setbacks, bufferyards, parking, walkways, lighting, signs, landscaping, walls, fences, open space, and recreation areas.
- l. Architectural elevation drawings of all buildings, signs, and other structures.

(7) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minuts (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

- m. On separate sheets, if necessary, include existing conditions of the proposed FSP area. If applicable, include the following:
  - 1. FSP name.
  - 2. Location, width, and purpose of all easements on site.
  - 3. Public rights-of-way on and within 150 feet of the site: name, width, and classification.
  - 4. Utilities on and adjacent to the site: Location and size of water wells, water reservoirs, water lines, sanitary and storm drains, and drainage facilities; location of all irrigation channels and drains; location of gas lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the direction, distance, and size of nearest lines.
  - 5. Existing topography guidelines:
    - i. For land with average slope of less than five percent (5%), show contour lines at intervals of not more than two (2) feet.
    - ii. For land with average slope of more than five percent (5%), show contour lines at intervals of not more than five (5) feet.
  - 6. Conditions on adjacent land significantly affecting design of the FSP: direction and gradients of ground slope, character and location of development, access points from adjacent points, and building types.
- n. Approval block signifying the Final Site Plan approved to be signed by the Zoning Administrator upon approval by the Planning and Zoning Commission and resolution of all outstanding staff comments.

#### F. EXISTING PLANNED UNIT DEVELOPMENTS.

A PUD existing on the effective date of this Code may continue to develop based on the approved PUD conceptual plan and final site plan. However, a proposed substantial change as defined in this Division shall require that an existing PUD comply with all the requirements of this Code.



Exhibit 'A' (pt. 3) – P&Z**Sec. 38-54. Special Use Permits**

A GENERAL PROVISIONS AND PROCEDURES. A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. PRE-APPLICATION PROCEDURES. Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

2+. APPLICATION PROCEDURES. An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

a. A letter of intent stating the following:

- 1) A statement of the purpose and use of the property,
- 2) All property improvements to be made, and
- 3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

c. Site Plans. The site plans shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

- 1) Title of site plan.
- 2) Total acreage of site.
- 3) Date of preparation, north arrow, written and graphic scale.
- 4) Identification of site by lot, block, subdivision, if applicable.

- 5) A statement of ownership, signed by the property owner, that complies with Section 38-10.C.8).
- 6) Name and address of property owner.
- 7) Name and address of applicant, if applicable.
- 8) Name and address of consulting firm or representative, if applicable.
- 9) Location and type of all land uses.
- 10) All site improvements with all setbacks indicated.
- 11) Dimensions of all buildings.
- 12) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
- 13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
- 14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
- 15) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8 $\frac{1}{2}$ " x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

- 1) All new development illustrating all exterior building materials and colors.
- 2) All new development illustrating relationships to neighboring uses, including site lighting.
- 3) Sign location, materials, color, size, shape, and lighting.

A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, or the Planning and Zoning Commission.

Application materials which are illegible and/or otherwise of a low quality will not be accepted.

A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing information before acting on a request. The City Council may require additional information before acting on an appeal.

Special Use Permit applications processed via the IDP for residential uses may exclude the landscaping plan and schedule as part of the submittal. All landscaping requirements of the City Design Standards shall be complied with at time of construction.

e. Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minuts (summary or verbatim) from any required meeting pursuant to Section 38-10 C. 1. (d) (v).

32. PUBLIC HEARING AND NOTICE PROCEDURE. A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of Section 38-10 of this Code.

34. REVIEW AND APPROVAL PROCEDURES. The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.

54. TIME LIMITATIONS, REVOCATIONS, AND DEVELOPMENT STANDARDS. In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one (1) year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

Any major revision proposed to the Special Use Permit and site plan shall require resubmittal of the Special Use Permit and site plan in their entirety. Minor revisions are those changes that are not major and may be approved by the Community Development Director or designee. Major revisions to the Special Use Permit and site plan shall include, but are not limited to:

- a. Any change in land use,
- b. Fifteen (15) percent cumulative increase in land use or building square footage,
- c. Fifteen (15) percent cumulative increase in vehicular traffic on any roadway segment or intersection,
- d. Any increase or decrease in size of the Special Use area,
- e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line,
- f. Fifteen (15) percent cumulative increase in the buildable area for structures including signs, and
- g. Reduction or elimination of time limitations.
- h. Renewal of the Special Use Permit.

65. RECORDING OF THE SPECIAL USE PERMIT. After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall

include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Dona Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

- B. SPECIAL USES ENUMERATED. The following are special uses that may be approved by the Planning and Zoning Commission in accord with the provisions and conditions of this Section. The Planning and Zoning Commission may, at its discretion, impose additional conditions when deemed necessary. Such uses may be approved only within the districts stipulated.

Sec. 38-33G Adult Bookstore/Video Store or Adult Amusement Establishment (M1/M2, and M-3). These uses shall be permitted provided:

1. Such uses are located at a minimum of 1,000 feet from a property line of a:
  - a. school;
  - b. church;
  - c. nursery/day care;
  - d. public park or recreational facility; and
  - e. residential zoning district;
2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and
3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36" x 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

**WARNING:**

**ADULT BOOKSTORE/VIDEO STORE.  
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

or

**WARNING:**

**ADULT AMUSEMENT ESTABLISHMENT.  
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

Sec. 38-33H Airport, Privately and Publicly Owned (C-2, C-3, M1/M2 and M-3). The Las Cruces International Airport (LCIA) property is zoned M-3(Conditional). The condition is that land uses will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

Sec. 38-33J Antennas, Towers, Communication Structures and Other Vertical Structures (All zoning districts). See Section 38-59.

Sec. 38-33E Amusement Park (Permanent)(EE, RE, REM, C-3, MT, M1/M2 and M-3). See Section 38-33E.

Sec. 38-33E Archery and Firing Range, Outdoor (OS-R, C-3, M1/M2, and M-3). See Section 38-33E.

Sec. 38-33G Auto/Truck Full or Self-Service/Automated Wash/Wax/Detailing (CBD). See Section 38-43.

Sec. 38-33G Auto/Truck Repair & Service (CBD). See Section 38-43.

Sec. 38-33A Boarding House (CBD). See Section 38-43.

Sec. 38-33C Brewery and Winery(EE and REM).

Sec. 38-43 Building Height over 50 feet (CBD).

Sec. 38-33A Campground (C-3, and M1/M2). See Section 38-57.

Sec. 38-33D Cemetery/Columbarium (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM and R-1bM). Any cemetery site shall contain at least five (5) acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Sec. 38-33D Group Child Care Home (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM and R-2).

Sec. 38-33E Country Club, Golf Course and/or Driving Range (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). There shall be screening and buffering on property lines abutting residential areas and no structures shall be within fifty (50) feet of a residential property line. The parking areas for these uses shall have access to a collector or higher designated roadway. Country clubs within the OS-R zone shall be designed in concert with a golf course or similar large open area.

Sec. 38-33I Extraction of Raw Materials (Not to include Manufacture, Processing or Treatment) (EE, RE, and REM). Such uses shall be a minimum of four hundred (400) feet from a residential district boundary or from an existing residential property. Uses shall not create a significance nuisance due to noise, odor, pollution, traffic or other similar problems. See Section 38-33I.

Sec. 38-33G Gas Station (CBD). See Section 38-43.

Sec. 38-33A Halfway House (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3 and R-4).

Sec. 38-33H Heliport/Helistop (EE, REM, R-4, O-2, C-2, C-3, M1/M2 and M-3). Use shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

Sec. 38-33C Racetrack, Animal/Rodeo Arena (EE, RE-Mobile, C-3, M1/M2 and M-3)

Sec. 38-33E Racetrack, Auto/Truck (M-3).

Sec. 38-32D Single Business/Use (Non-Center) - Increased Square Footage Above Maximum (C-1 and C-2). Additional square footage not to exceed 2,000 may be granted in the C-1 district. Additional square footage not to exceed 6,000 may be granted in the C-2 district.

Sec. 38-33E Sports Complex/Stadium: Baseball, Football, Soccer, Softball, Track, etc. (EE, REM, C-3, M1/M2, and M-3). Parking and structures shall be located a minimum of three hundred (300) feet from any residential zoning district boundary.

Sec. 38-33J Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

**Sec. 38-55. RESERVED**

Exhibit 'A' (pt. 3) – P&Z**Sec. 38-54. Special Use Permits**

A GENERAL PROVISIONS AND PROCEDURES. A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. PRE-APPLICATION PROCEDURES. Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10 C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

24. APPLICATION PROCEDURES. An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

a. A letter of intent stating the following:

- 1) A statement of the purpose and use of the property,
- 2) All property improvements to be made, and
- 3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

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- 3) Date of preparation, north arrow, written and graphic scale.
- 4) Identification of site by lot, block, subdivision, if applicable.

- 5) A statement of ownership, signed by the property owner, that complies with Section 38-10.C.8).
- 6) Name and address of property owner.
- 7) Name and address of applicant, if applicable.
- 8) Name and address of consulting firm or representative, if applicable.
- 9) Location and type of all land uses.
- 10) All site improvements with all setbacks indicated.
- 11) Dimensions of all buildings.
- 12) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
- 13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
- 14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
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d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8½" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

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34. REVIEW AND APPROVAL PROCEDURES. The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.

54. TIME LIMITATIONS, REVOCATIONS, AND DEVELOPMENT STANDARDS. In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one (1) year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

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- a. Any change in land use,
- b. Fifteen (15) percent cumulative increase in land use or building square footage,
- c. Fifteen (15) percent cumulative increase in vehicular traffic on any roadway segment or intersection,
- d. Any increase or decrease in size of the Special Use area,
- e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line,
- f. Fifteen (15) percent cumulative increase in the buildable area for structures including signs, and
- g. Reduction or elimination of time limitations.
- h. Renewal of the Special Use Permit.

65. RECORDING OF THE SPECIAL USE PERMIT. After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall

include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Dona Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

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  - a. school;
  - b. church;
  - c. nursery/day care;
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  - e. residential zoning district;
2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and
3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36" x 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

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THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

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**WARNING:**

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All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

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Sec. 38-33J Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

**Sec. 38-55. RESERVED**

**CITY OF LAS CRUCES**

**SUBDIVISION CODE**

**(Chapter 37, Las Cruces Municipal Code)**

DRAFT

**Adopted: March 27, 2006**

**Printed: April 2006**

**CITY OF LAS CRUCES  
SUBDIVISION CODE**

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- Sec. 37-206. Replat--Defined.
- Sec. 37-207. Process to follow when replatting.
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- Sec. 37-237. Submittal process for vacation plats.
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**Article IX. Annexations**

- Sec. 37-266. Purpose of annexation.
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**Article XI. Waiver of Regulations**

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- Sec. 37-360. General provisions.

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## ARTICLE I: GENERAL PROVISIONS

### Sec. 37-1. Introduction.

This chapter applies to anyone wishing to divide a parcel of land into two or more parts or to eliminate or adjust lot lines between two or more existing parcels. The required information and the steps to be taken vary and depend on certain characteristics of the proposal, such as the desired number of lots, the intended use of each, the location and legal description. The following information will help determine the process and the requirements necessary for dividing the property.

*Why subdivide?* People subdivide land for many reasons, the most common being for resale. For example, you may wish to sell a portion of your land to another person. Other reasons for subdividing land might include such transactions as long-term leasing or the mortgaging of a portion of a lot. In order to accomplish any of these, it is necessary to follow the procedures outlined in this chapter.

*What is a subdivision?* Just as there are many reasons for subdividing land, there are also many ways to subdivide. Some subdivisions consist of just one to two lots and can utilize the alternate summary process. Others consist of hundreds of lots to be developed in phases of a few lots at a time and must follow the processes as illustrated by this chapter's procedures for master plans, preliminary plats, and final plats. A subdivision proposal may contain multiple lots but also may change the uses of the property as well. When a subdivision is proposed in the central part of the city to utilize existing roads and utilities, it may be possible to use the infill subdivision process. Often subdivisions propose to change something about property that has already been subdivided; this would be considered a replat, as defined in this chapter's section on replats.

Subdivisions come in a variety of shapes, sizes, uses and locations. Many require the construction of streets, sidewalks or other improvements to serve the lots created; while some utilize existing infrastructure. Therefore, this chapter provides four basic processes to suit the wide variety of possibilities involved in subdividing land; the alternate summary process, Replat, infill subdivision process and major subdivision process.

*One or two lots.* The alternate summary process (article VI) and replat (article VI and VII) are followed when a subdivision of land consists of no more than two lots. While larger subdivisions consisting of three lots or more are required to be approved by the planning and zoning commission at a public hearing, the alternate summary process is intended to streamline the processing of small subdivisions by allowing them to be approved administratively.

*In the central part of the city.* The infill subdivision process (article V) is designed to make desirable the development of vacant land in the central part of the city. The boundary of the infill area is generally bordered by Interstate 25, University Avenue, Valley Drive, and North Main Street. All subdivision proposals within this boundary would be considered infill subdivisions. There are two methods of processing subdivisions within the infill area. One is the infill development process, an expedited procedure which allows variances, special use permits, and other land use issues to be addressed. The second method is the infill subdivision method, also an

expedited method for subdivision-related cases only and for properties which do not qualify to use the infill development process. See article V, infill subdivision process, for more details regarding these two processes. Subdivision proposals in the infill area consisting of just one or two lots may follow the alternate summary process.

*Major subdivisions.* A subdivision that does not meet the criteria under the alternate summary process, Replat procedures or infill subdivision process is considered a major subdivision. This name is somewhat deceiving in that a major subdivision may range from just three lots to a multi-phased development consisting of hundreds of lots. The typical major subdivision is required to follow both the preliminary plat (article III) and final plat (article IV) procedures. More complex proposals, such as phased development, development with multiple land uses and large developments (over 40 lots), will be required to follow the master plan (article II) process in addition to the preliminary and final platting processes. The master plan is also required when a property owner with property outside the city wishes to annex his/her property into the city limits.

*City subdivision process.* No matter which type of subdivision you may be proposing, the basic process is the same. The subdivision plat must be prepared by a surveyor licensed to practice in the state. The subdivision plat and related materials will be submitted to the city community development department. The city's subdivision administrator will review the materials and, if complete, accept the submittal for formal staff review. The proposal is distributed to various city departments and other governmental agencies for review and comment. These comments, if applicable, are returned to the consulting surveyor to be addressed. Once all comments have been addressed, the subdivision administrator will schedule the proposal for approval consideration by the appropriate body. Depending on the type of subdivision, the approval consideration may come from the subdivision administrator, the development review committee, or the planning and zoning commission.

Once the final plat is approved, you can proceed to construct any required improvement necessary to allow the plat to be filed in the county courthouse. It is possible to provide a form of financial security to cover the cost of the required improvements in order to file the plat before completing roads and utilities. The city's subdivision administrator will oversee the proposal from the time it is submitted until the plat is filed and/or all improvements are constructed. (Ord. No. 1798, § I, 6-19-00; Ord. No. 1929, §§ I, II, 8-5-02)

**Sec. 37-2. The title of this document.**

This chapter shall be known and shall be cited as the "Subdivision Code" of the City of Las Cruces, New Mexico.

(Ord. No. 1798, § I, 6-19-00)

**Sec. 37-3. The purpose of this chapter.**

The purpose and intent of this chapter are to promote the health, safety, convenience and general welfare of the citizens of the city through the implementation of a readable and understandable set of subdivision regulations outlining the processing of subdivision applications. More specifically, provisions of this chapter are designed to achieve the following objectives in newly-subdivided areas:

- Ensure orderly, efficient and integrated development within the city pursuant to guidelines established by the elements of the city comprehensive plan and all other applicable city policies, rules and regulations.
- Promote proper street location, width and design in order to facilitate vehicle circulation and to minimize adverse growth impacts in accordance with the metropolitan planning organization (MPO) transportation plan, the transportation element of the comprehensive plan and city design standards.
- Provide for the protection and preservation of natural resources and the promotion of natural beauty within the city.
- Provide for adequate air circulation, lighting, public open spaces, utility services, traffic movement, drainage and public facilities.
- Ensure that proposed development is suitable for a given parcel of land, based on its location and environmental characteristics.
- Strive for a customer service approach to subdivision application processing.

(Ord. No. 1798, § I, 6-19-00)

**Sec. 37-4. The city authority to require subdivision regulations.**

A. This chapter is created and adopted pursuant to the authority set forth in NMSA § 3-19-6, as amended, and shall be applicable to all property within the corporate limits of the city, except for state and federal land being used for public purposes.

B. The city council, the planning and zoning commission, the development review committee (DRC) and the subdivision administrator (SA) are the review and/or approval bodies for this chapter to regulate the subdividing of land within the corporate limits of the city.

(Ord. No. 1798, § I, 6-19-00)

**Sec. 37-5. Severability.**

If any article, section, paragraph, sentence, phrase or part of this chapter is declared unconstitutional or otherwise invalid, the remaining portions shall not be affected.

(Ord. No. 1798, § I, 6-19-00)

**Sec. 37-6. Interpretation and conflict.**

A. *Minimum requirements.* The provisions of this chapter shall be considered to be the minimum requirements to meet the purpose expressed in section 37-3 of the Code; nothing herein prohibits the review/approval bodies from imposing greater requirements to ensure the promotion of health, safety and welfare of the citizens of the city and to achieve the goals and objectives of the comprehensive plan.

B. *Local conflict.* Where the provisions of any local ordinance or regulation impose greater

restrictions than those of this chapter, the provisions of such document shall prevail.

- C. *Federal and state conflict.* Any provisions of U.S. or state law that impose a greater duty, standard or requirement than those contained herein shall supersede the provisions of this chapter.
- D. *Conflict within this chapter.* When two or more provisions of this chapter are in conflict, the most restrictive provision shall apply.
- E. *Interpretation of meaning.* The subdivision administrator shall interpret the meaning of the provisions of this chapter. Disagreement with an interpretation may be appealed to the development review committee. The decisions of that committee may be appealed to the planning and zoning commission, and the commission decision may be appealed to the city council.

(Ord. No. 1798, § I, 6-19-00)

#### **Sec. 37-7. Repeal.**

All subdivision regulations of the city effective prior to the adoption of this chapter are hereby repealed. Such repeals shall not affect nor prevent the prosecution or punishment of any person for the violation of any regulations repealed for an offense committed prior to the repeal.

(Ord. No. 1798, § I, 6-19-00)

#### **Sec. 37-8. Changes and amendments.**

This chapter may be changed and amended by the city council. Such changes or amendments shall not become effective until after a public hearing has been held on the amendments by the planning and zoning commission and recommendations from the commission have been forwarded to the city council. Before such hearings, notice of same must be published in a newspaper of general circulation in the city at least 15 calendar days before the hearing.

##### A. Notice Requirements:

1. Agenda - The agenda for Planning and Zoning Commission meetings shall be available no later than fifteen (15) calendar days prior to the meeting.
2. Notice - Notice regarding the time and place for the Planning and Zoning Commission public hearing shall be published at least fifteen (15) calendar days prior to the meeting, in a newspaper of general circulation in the City.
3. Notice of the City Council public hearing regarding proposed changes and agenda availability shall follow the City Clerk time frames and processes.

(Ord. No. 1798, § I, 6-19-00)

#### **Sec. 37-9. Penalties.**

- A. *Penalty for use of unapproved or unrecorded plat.* Any owner, or agent of the owner, of any land located within the city who transfers or sells such land prior to approval and recording of the necessary plat with the county clerk, as required in this chapter, shall be

deemed guilty of a misdemeanor, and upon conviction shall be penalized in the manner prescribed by law. The description of the land by metes and bounds in the instrument of transferring of land shall not exempt parties to the transaction from such penalties.

- B. *Penalty for improper recording.* Any person who records with the county clerk any plat in violation of this chapter shall be deemed guilty of a violation of this chapter and of state law, and upon conviction shall be punished by a fine of not less than \$100.00. Also, all city-provided utilities and services may be withheld or withdrawn from the property until such time as this chapter is complied with. (Ord. No. 1798, § I, 6-19-00)

**Sec. 37-10. Fees.**

- A. A fee is required to offset the costs associated with processing and reviewing the subdivision application, excluding subdivisions processed through the infill development process.
- B. All fees related to this chapter shall be adopted by resolution of the city council.  
(Ord. No. 1798, § I, 6-19-00)

**Sec. 37-11. Processing subdivision applications.**

- A. Following all prerequisite steps identified for the application types that are listed elsewhere in this code, All subdivision applications including submittal materials and fees are to be submitted to the community development department. The subdivision administrator will review the submittal and, if accepted, the submittal will be processed for review. When the review process is completed, the subdivision administrator will schedule the submittal for consideration by the appropriate review/approval officials or bodies and follow the submittal through to final action.
- B. *Notice of decision.* Upon making a recommendation to the city council or taking final action on matters for which the planning and zoning commission has been granted final authority, the community development department shall promptly:
1. Prepare a written decision that includes an order and a statement of the factual and legal basis for the order:
    - a. Recommending the granting or denying of relief; or
    - b. Granting or denying relief.
  2. File the written decision with the city clerk.
  3. Send by certified mail, to all parties whose rights will be determined by the decision, a document containing original signatures that includes a copy of the written decision of the planning and zoning commission. Also, this document shall state the requirements for filing an appeal.
  4. Send by regular mail, or otherwise provide a copy of the document that includes a copy of the written decision of the planning and zoning commission to every person who has filed a written request with the community development department for notice of the decision.

(Ord. No. 1798, § I, 6-19-00; Ord. No. 1929, §§ I, II, 8-5-02)

**Sec. 37-12. Review/approval bodies.**

The city council, the planning and zoning commission, the development review committee (DRC) and the subdivision administrator (SA) are the review/approval bodies of this chapter. Depending on the type of subdivision application submitted, any of the four review/approval bodies may be the one to grant final approval of the subdivision submittal.

A. *Subdivision administrator.* The subdivision administrator is a representative of the city whose objective it is to simplify the subdivision process for the applicant, while at the same time addressing all concerns related to the proposal on behalf of the city. The SA is the source of information for the general public, the development community and the staff regarding the subdivision process and its requirements. The SA shall facilitate the processing of all subdivision submittals from preapplication meetings to final acceptance of subdivision improvements.

1. *Authority of the subdivision administrator.* The SA shall have the authority to waive or add submittal requirements in cases in which it is determined that the additional information is necessary to accomplish the objectives of this code. Waiver of engineering/utilities-related submittal requirements shall require the concurrence of the public works director or the utilities director, as appropriate. The SA shall justify, in writing, his/her request for additional submittal requirements.

The SA shall have the authority to determine the applicability of comments returned by the reviewing staff and to override such comments if it is determined that the comments do not apply to the type of submittal under consideration or that it is inconsistent with city policy, rules and/or regulations. The SA may, with concurrence from the development review committee, approve subdivisions processed through the alternate summary procedure.

2. *Responsibilities of subdivision administrator.*
  - a. Address questions from the general public/developers/consultants and staff related to all areas of subdividing/developing land.
  - a.b. Ensure that all notification measures are carried out pursuant to applicable provisions either codified (Subdivision Code) or within approved policy.
  - b.c. Accept or reject submittals.
  - e.d. Facilitate communication between reviewers and developers/subdividers/consultants.
  - d.e. Resolve issues/problems arising from a staff review of a subdivision.
  - e.f. Schedule meetings and prepare agendas for the development review committee.
  - f.g. Prepare staff recommendations and reports for cases requiring planning and zoning commission approval.
  - g.h. Monitor the progression of construction activities in subdivision improvements and associated performance guarantees or similar agreements through final inspections and acceptances of subdivisions.
  - h.i. Identify, as staff liaison to the development review committee, the subdivisions that are required to be reviewed by the development review committee.

B. *Development review committee.* The development review committee (DRC) is a formal

group of representatives employed by the city or its representatives empowered to act on behalf of their respective departments on subdivision development related applications.

1. Membership of the development review committee shall consist of at least one representative from each of the following:
  - a. Public works department;
  - b. Community development department;
  - c. Utilities department;
  - d. Fire department;
  - e. Facilities department;
2. The purposes of the development review committee are:
  - a. To identify and address major issues that may affect a proposal, and to provide general oversight of the reviews of subdivision- and development-related proposals;
  - b. To resolve conflicting comments, recommendations, and design differences between reviewing departments and subdividers/developers regarding planning-related issues that have been appealed from the decision of the subdivision administrator.
  - c. To make recommendations to the planning and zoning commission for approval, conditional approval, denial or postponement of master plans, preliminary plats and final plats.
3. Authority and procedure of the development review committee. The development review committee shall have final authority for approval of infill concept plans, alternate summaries, and replats that do not increase the number of lots in an existing subdivision. The development review committee's decision shall be final unless it is overruled by appeal to the director or directors responsible for the area of disagreement and/or further appealed to the planning and zoning commission or city council.

The development review committee shall meet at the same time each week as needed to review subdivision application submittals, potential submittals or other development-related issues that may require DRC review. The notice of the DRC meeting shall appear in the public meeting schedule. The subdivision administrator shall set the agenda for DRC meetings and abide by all notification requirements pursuant to approved policy, which shall be made available 24 hours prior to the development review committee meeting. Minutes will be taken during DRC meetings and will become available to interested parties in the form of staff review comments.

- C. *Planning and zoning commission.* The planning and zoning commission is a seven-member board appointed by the city council.
  1. Authority of the planning and zoning commission:
    - a. Final authority on master plans, preliminary plats and, as appropriate, final plats and on all issues referred to the Commission by the development review committee.
    - b. Recommendation to city council on amendments to this chapter.
    - c. The commission may recommend that any subdivision proposal be reviewed by the city council.

- d. All other authority is granted to the commission in accordance with section 38-66 of the city municipal code, and ordinance no. 1267.
2. A notice of the decision of the planning and zoning commission shall be provided in accordance with section 37-11(b).

D. *City council.* The city council is a seven member board of elected officials that is the governing body of the city.

1. Authority of the city council. The city council, as it pertains to this chapter, has the authority to:
  - a. Resolve appeals of decisions made by the planning and zoning commission and the development review committee.
  - b. Grant final approval of amendments to this chapter.
  - c. Grant approval of any development proposal in which the planned unit development process is used or any proposal in which a planning-related waiver greater than 15 percent of the required standard is requested.
2. A notice of the decision of the city council shall be provided in accordance with section 37-11(b).

(Ord. No. 1798, § I, 6-19-00; Ord. No. 1929, §§ I, II, 8-5-02)

**Sec. 37-13. Procedures for appealing decisions of the staff, the development review committee and the planning and zoning commission.**

- A. *Basis for appeals.* Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing and delivered to the community development department within 15 calendar days after the decision and all other procedures established by this chapter have been exhausted. The appeal shall state all issues to be considered.
- B. *How decisions are appealed.* The city council, the planning and zoning commission, the development review committee, the public works director and the utilities director are responsible for hearing appeals at designated stages of the subdivision process.
- C. *Appeal of staff decisions.* Staff decisions may be appealed at any time during the subdivision application process. Appeals of staff decisions may fall under one of two categories, engineering/utility issues and planning related issues. The subdivision administrator shall determine whether the appeal should be to an engineering/utility issue or to a planning-related issue, and shall notify the appropriate body to review the appeal.
  1. *Appeal of engineering opinions.* Engineering/utility related opinions are related, but not limited to: design specifications for roadways, grading, drainage, utilities, or other issues determined by the subdivision administrator and/or the public works director to be engineering-related.

Appeals of staff decisions regarding engineering/utility-related issues are resolved by the public works director or the utilities director, respectively. The appeal may be submitted at any time during the subdivision application process. Appeals shall be

submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for a review of the appeal. The meeting shall include the applicant, public works director and/or the utilities director, as appropriate and the staff member whose decision is being appealed. Upon review of the appeal, the public works director or the utilities director shall render a decision within three business days of the meeting.

2. *Appeal of planning related issues.* Planning related issues are issues related to, but not limited to: lot configuration, street network, right-of-way requirements, land use, density, phasing of development, suitability of location, or other issues determined by the subdivision administrator to be planning-related.

Appeals of staff decisions regarding planning related issues are resolved by a committee of at least three of the following: the community development director, facilities director, public works director, utilities director and fire chief. The appeal may be submitted at any time during the subdivision application process.

Appeals shall be submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for review of the appeal. The meeting shall include at least three department directors, the DRC and the staff member whose decision is being appealed. Upon review of the appeal the directors shall render a decision on the appeal at the meeting.

D. *Appeal of engineering/utility decisions of the public works director or the utilities director.*

1. Appeals of the public works director or the utilities director's decision regarding engineering or utility related issues are resolved by arbitration. The appeal shall be submitted to the subdivision administrator within 15 calendar days of the decision of the public works director or the utilities director.
2. *Arbitration defined.* Arbitration is the final appeal process used to resolve only engineering or utility related issues that have been reviewed and acted on by the development review committee, public works director or the utilities director.
3. *Arbitration procedure.* When an appeal alleges that there is fault in a decision made by either the public works director or the utilities director with regard to an engineering- or utility-related issue, the appeal shall be resolved by an arbitration committee. The appellant shall submit the appeal in writing to the subdivision administrator within 15 calendar days of the decision of either the public works director or the utilities director. The arbitration committee shall review the engineering or utilities related issue under question and any pertinent information within 30 calendar days of the appeal submittal. The appellant shall be responsible for all costs associated with the arbitration board.
4. *Arbitration committee.* The arbitration committee shall consist of three engineers licensed to practice in the state who are not associated with the city, but are familiar with its development standards. The city shall choose one engineer, the applicant shall choose the second engineer, and the two chosen engineers shall choose the third.

Action from the arbitration committee shall be in the form of approval or disapproval.

Action from the arbitration committee shall be final unless appealed to the state board of registration for professional engineers and surveyors or to a court of competent jurisdiction.

E. *Appeal of planning related decisions of the department directors.*

1. Appeal of a planning related decision of the department directors is resolved by the planning and zoning commission. Appeals shall be submitted in writing to the subdivision administrator within 15 calendar days of the development review committee's decision.
2. Authority of the planning and zoning commission. The planning and zoning commission, by a majority vote of a quorum of the commission ~~with all its members~~, may, after all other procedures established by this chapter have been exhausted, reverse or affirm any order, requirement, decision, or determination of the development review committee, or make any change in an order, requirement, decision, or determination of the planning related decision at a public hearing.

F. *Appeal of decisions of the planning and zoning commission.*

1. Appeal of a decision of the planning and zoning commission is resolved by the city council. Appeals shall be submitted in writing with the appropriate fees to the subdivision administrator within 15 calendar days of the planning and zoning commission's decision.
2. Authority of the city council. The city council, by a majority vote of all its members, may, after all other procedures established by this chapter have been exhausted, reverse or affirm any order, requirement, decision or determination of the planning and zoning commission, or make any change in an order, requirement, decision, or determination of the planning and zoning commission. The decision of the city council may be appealed to district court.

G. *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, board, or authority from whom the appeal is taken certifies that, by reason of facts, a stay would cause imminent peril of life and property.

H. *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the community development department a detailed statement of the grounds of their appeal, no later than 15 calendar days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

I. Notice. Notice on all appeals of decisions of the Planning and Zoning Commission shall:

1. Be sent by regular mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within no less than five hundred (500) feet of the subject property. This distance may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing.
2. Require regular, non-certified, first class mail to be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property if staff has determined that such notice was warranted. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing.
3. Require notice of the time and place of the public hearing be published at least fifteen (15) calendar days prior to the public hearing in a newspaper of general circulation in the City.
4. In the event that notification signs were issued for the case now under appeal, the property owner and/or original applicant shall ensure that all signs previously erected for notice purposes remain up until a decision on the appeal is rendered. Modification to and/or replacement of said signs shall be authorized and directed by staff to ensure appropriate information regarding the appeal venue is displayed. Notice on all appeals of decisions of the planning and zoning commission shall be sent by regular mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 200 feet of the area of the proposed development, excluding streets, alleys, channels, canals, other public rights-of-way and railroad rights-of-way. Notice to said property owners shall be mailed at least nine calendar days prior to the meeting.
- 4.5. The SA shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice of the time and place of the meeting shall be published in a newspaper of general circulation in the city area and also posted on the property by the community development department at least nine calendar days prior to the meeting.

J. Fees shall be assessed to the appellant person or persons in order to cover the costs of such appeal. Such fees shall be as prescribed in the fee schedule as adopted and amended. (Ord. No. 1798, § I, 6-19-00; Ord. No. 1929, §§ I, II, 8-5-02)

#### **Sec. 37-14. Definitions.**

*Block.* An area of land within a subdivision, generally bounded by highways, streets (other than alleys), natural boundaries, or the exterior boundaries of the subdivision.

*Building setback.* The right angle distance from a point on the street right-of-way to the closest point of any building structure.

*City.* The City of Las Cruces, New Mexico.

*City council.* The governing body of the city.

*Collector.* A street designed to carry moderate to large volumes of traffic (generally a minimum ADT of 5,000 vehicles), primarily from local streets to arterials. Collectors may provide some direct access to individual properties, usually large residential developments and mid-size commercial/industrial/office developments. The length of a major collector seldom exceeds one mile.

*Contiguous property.* Parcels of property that are in contact or touching.

*Cul-de-sac.* A minor street with only one outlet and culminated by a turn-around. Refer to section 32-36 of the city municipal code.

*Development review committee (DRC).* A formal group of representatives employed by the city that meets at the same time each week to review subdivisions or subdivision related proposals and to resolve conflicting comments, recommendations or design differences between city reviewing departments, subdivision administrator, and/or developers/subdividers. The development review committee's decision shall be final unless overruled by a committee of department directors, the planning and zoning commission or city council (See appeals section 37-13).

The development review committee shall consist of at least one representative from each of the following:

- Public works department;
- Community development department;
- Facilities department;
- Utilities department;
- Fire department;

DRC members or their designee shall have the authority to make nonpolicy decisions on behalf of their respective departments and the city.

*Drainage plan.* A plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of:

- The existing storm drainage conditions of a proposed development; and
- The disposal of the increased runoff that is generated by the proposed development.

*Dwelling.* A building or unit thereof designed and used exclusively for residential occupancy.