



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

April 24, 2018 - 6:30 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Richard Boss Mayor
Jason Baldwin Mayor Pro-Tem, District 1
Nadia Sikes District 2
Susan Payne District 3
Josh Rardin District 4
Al Hernandez District 5
Dusty Wright District 6

Maggie Paluch City Manager
Petria Schreiber City Attorney
Rachel Hughs City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4205.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. National Thank a Firefighter Day Proclamation.

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. Comments are limited to 3 Minutes, and there will be a maximum of 21 Minutes allowed for Public Comment.

CITY MANAGER'S REPORT**REMARKS AND INQUIRIES BY THE CITY COMMISSION****CONSENT AGENDA** (Roll Call Vote Required for an Ordinance or Resolution)

All matters listed under the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

2. Approve the minutes for the April 10, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, final publication of Ordinance 1563 amending Chapter 12 of the Alamogordo Code of Ordinances regarding the Alamogordo Fire Department. *(Petria Schreiber, City Attorney)* **(Roll Call Vote Required)**
4. Consider, and act upon, award IFB 2018-02 Miscellaneous Foods, Dairy Products & Items for the Alamogordo Senior Center Program to multiple vendors in the amount not exceed \$177,419.52. (Veronica Ortega, Community Services Director)
5. Consider, and act upon, Resolution 2018-15 approving the Housing Authority Smoke Free Policy. *(Evelyn Huff, Housing Authority Manager)* **(Roll Call Vote Required)**
6. Consider, and act upon, Resolution 2018-17 approving the Housing Authority's Admissions and Continued Occupancy Policy. *(Evelyn Huff, Housing Authority Manager)* **(Roll Call Vote Required)**
7. Consider, and act upon, Resolution 2018-18 approving the Housing Authority's Five-Year Capital Fund Plan, HUD Form 50075.2. *(Evelyn Huff, Housing Authority Manager)* **(Roll Call Vote Required)**
8. Approve the Lodger's Tax Expenditures for Tourism & Travel. *(Michelle Brideaux, Communications & Marketing Administrator)*
9. Consider, and act upon, Resolution No. 2018-23 supporting the New Mexico Department of Tourism Cooperative Marketing grant application for the Alamogordo Promotions Board. *(Michelle Brideaux, Communications & Marketing Administrator)*

ITEMS REMOVED FROM CONSENT AGENDA**NEW BUSINESS**

10. Discussion on F-4 Static Display Location. *(Armando Quinones, Airborne Memorial Representative, Brian Cesar, Assistant City Manager and Jim Talbert, Airport Manager)*
11. Consider, and act upon, approval of change order 6 for \$6,741.61, including NMGR, to White Sands Construction Company related to the Family Recreation Center Locker Room Renovations. *(Nancy Beshaler, Project Manager)*
12. Discussion and possible direction to staff on scheduling a joint meeting with the Otero County Commission. *(Maggie Paluch, City Manager)*
13. Consider, and act upon, Ordinance 1567 for first publication incorporating the New Mexico Uniform Traffic Ordinance into the Alamogordo Code of Ordinances. *(Petria Schreiber, City Attorney)*

14. Consider, and act upon, Resolution 2018-21 approving a GRIP agreement between the City of Alamogordo and Solid Cap Properties for the remodeling of the location for Melrose Family Fashions. (*Petria Schreiber, City Attorney*)

15. Consider, and act upon, first publication of Ordinance 1569 updating Chapter 13 of the Alamogordo Code of Ordinances to comply with Federal requirements. (*Nancy Beshaler, Project Manager*)

16. Consider, and act upon, first publication of Ordinance Number 1568 to amend the official zoning map of the City of Alamogordo and rezoning the property commonly known as 481 Michel Street with legal description of Fambrough Subdivision 2, Replat B, Lot 1-B, Case # Z-2018-0001 (A) from MH-2 Manufactured Housing Park District to R-4 Multiple Family Dwelling District (*City Planner, Darron Williams*).

17. Consider, and act upon, Resolution 2018-22 affirming support for the White Sands National Park Establishment Act. (*Maggie Paluch, City Manager*)

18. Appointments to Boards and Committees. (*Richard Boss, Mayor*)

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/16/2018

Report No: 1.

Submitted By: Petria Schreiber

Subject: National Thank a Firefighter Day Proclamation.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: May 4, 2018 is National Thank a Firefighter Day.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date:

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the April 10, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
April 10, 2018**

**RICHARD BOSS, MAYOR
AL HERNANDEZ, COMMISSIONER
NADIA SIKES, COMMISSIONER
JOSH RARDIN, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
MAGGIE PALUCH, CITY MANAGER
PETRIA SCHREIBER, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE

Mayor Boss called the meeting to order at 6:30 p.m. Roll Call was taken by the Deputy City Clerk. Deputy City Clerk Barraza announced there was a quorum present. Invocation was given by Reverend Dwight Harp and the Pledge of Allegiance was led by Commissioner Wright.

Mayor Boss explained the public comment process and the sign-up sheet for public comment. He recognized Senator Ron Griggs in the audience

APPROVAL OF AGENDA

Commissioner Hernandez moved to approve the agenda.

Mayor Pro-Tem Baldwin seconded the motion. Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Purple Up for Military Kids Day Proclamation. (*Richard Boss, Mayor*)

Mayor Boss said April is the designated month of the Military Child. He then gave a brief background of how this came about. He asked Air Force Master Sergeant Kimmy Middleton to come forward.

Master Sergeant Middleton introduced the Blanton Family. She said this family epitomizes the sacrifice and resilience required of our Military Families.

Mayor Boss read and presented a Proclamation to Master Sergeant Middleton. He proclaimed Friday April 13, 2018 as: "Purple Up! For Military Kids Day".

2. Community First Lego League Team presentation. (*The Glitches*)

Ms. Cerra thanked the Commissioner to allow the Glitches to come to the meeting to do a presentation. She said this team placed third in the State Championship in New Mexico and will be representing our State in Arkansas in May. The Glitches gave a presentation on water conservation. They also discussed their design which is an eco-friendly water system that combines a temperature sensor, a humidity sensor and a soil moisture sensor that can indicate the different types of soil in plants, to make sure that lawns watered just right.

Commissioner Sikes asked to see their prototype design. She also asked the Glitches to introduce themselves. She said the one thing that was said, that is extremely impressive, is that the Glitches are thinking about patenting this design. The Glitches are comprised of kids from four local schools and one home school.

Commissioner Payne said they were third, but the only team representing New Mexico, correct. Ms. Cerra said they are the only team representing New Mexico at the Razorback Invitational. There are two more teams from New Mexico, one is going to the Worlds competition and one is going to the North American Open Invitational. She said there are 72 teams at the Arkansas Razorback Invitational. They represent 12 different Countries, not counting the United States.

Commissioner Payne said she asked that they put them on the agenda because we do not recognize that enough; that we have some pretty amazing kids and pretty amazing youth things right here in Alamogordo. She said sometimes they are underrepresented. She pointed out that this is all volunteer, so these ladies volunteer their time to come and help these kids. She said they absolutely represent the best of what Alamogordo has to offer. She said thank you and she appreciates that.

3. White Sands National Park Establishment Act presentation. (*Dara Parker, Field Representative for the Office of Senator Martin Heinrich*)

Ms. Parker presented the White Sands National Park Establishment Act. She said the bill does two things; it makes White Sands National Monument a National Park and it also completes a land exchange between the monument and White Sands Missile Range (WSMR). She said the bill was developed by Senator Heinrich, working closely with the monument, WSMR, Holloman, the National Park Service and the Pentagon. She said they now have a complete draft reflecting the comments of the Stakeholders, but the bill hasn't yet been introduced. She gave an overview of opportunities for the region. She showed the Commission the areas being considered for the land exchange.

PUBLIC COMMENT

Couy Griffith commented on the following:

He commended the Commission for doing a great job and for bringing back discussion on Kids Kingdom. He said he has filed to run for Otero County Commissioner. He said if elected, he looks forward to working with the City Commission. He talked about the City and County relationship.

Linda De France commented on the following:

She expressed concerns about the Kids Kingdom design and about the community involvement. She said people want to see a breakdown of the cost, because it seems like very little for a very lot of money. She said the Exerplay design is not a bad design, but it is not what the people wanted. Mayor Pro-Tem Baldwin let her know that the breakdown is available, and she could ask her questions to City Manager Paluch.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She said the paint colors have been selected for the City Hall painting project. She said the contractor has elected to go with Dunn Edwards paint. The paint colors selected are Sahara. She said the beige color will be on the bottom portion of City Hall and Grange Hall is going to be on the top portion. She explained what colors other areas would be painted. She said the Project Manager has informed them that they have about \$40,000 remaining in the project and this also includes \$20,000 set aside for a contingency fund. She said with the remaining funds, staff is pricing out benches, trash cans, and the possibility of fixing the landscaping. The contractor is expected to begin work on April 21, 2018.

2. She said last week staff participated in a meeting with Mr. Glover, from Once a Day Marketing. She said Mr. Glover is working in conjunction with HK Advertising on the Community Branding Project, spearheaded by OCEDC's PR Task Force. The project is geared toward creating an overall brand for Alamogordo. She said Mr. Glover spoke about the new Brand Action Plan. She said there is going to be a lot of community meetings with elected officials, city and county departments, boards, committees, local media, businesses, organizations and the public schools. She said the City of Farmington has watched their brand "Jolt your Journey" with great success. She highly recommends for anyone to check out Farmingtonnm.org to see what community branding is all about. She said they have listed different jolt activities to do throughout the year.

3. She said staff is working on a request for qualifications for an economic development firm to facilitate portions of the local economic development projects. She said Otero County Economic Development Council (OCEDC) is the city's consultant on economic development. A RFQ was last published in 2013 and per purchasing requirements we need to go back out to bid. She said we met with OCEDC and the

Executive Board is aware that an RFQ is required at this time. She said the RFQ staff is developing that RFQ now and we expect it to be published very shortly.

4. She said the dilapidated home on Rockwood came down today. She said the materials are still on the property, however, it is fenced off to protect the citizens to ensure that no one goes on to the property. She said the next step is to haul off the material and then the City Attorney will assess a lien based on the amount of the demolition cost. Once the lien is assessed, the City can begin with the foreclosure proceedings. When the City takes ownership of the property, it will be up to the Commission's recommendation on how we move forward.

5. She showed the new Community Services brochure and said it has been released. She said you can pick it up at various locations, including City Hall, the Senior Center, the zoo, the library and the Chamber. She said the brochure has all the upcoming events for the summer as well as facility programs and how you can rent space here in Alamogordo.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He asked City Manager Paluch about his request for the City and County meeting. She said she spoke with the County Manager multiple times over email. She said the County Manager has been able to get in contact with two of her Commissioners. She said they are waiting on information for the third Commissioner. She said they are exchanging emails as to the topics they are looking for as well as the topic you have requested. Commissioner Rardin asked where we were at on the pothole that he called in about on Lavelle Road in front of the Convenience Center. City Manager Paluch said she would have to get back to him on that one. Commissioner Rardin said on Dexter Street there are multiple potholes and if she could add that to the list.

CONSENT AGENDA

4. Approve the minutes for the March 27, 2018 Regular meeting. (*Rachel Hughs, City Clerk*)

5. Consider, and act upon, Resolution No. 2018-20 supporting the New Mexico Department of Tourism Litter Control and Beautification grant application for Keep Alamogordo Beautiful (KAB). (*Kerry Uribe, Special Events Manager*) (Roll Call Vote Required)

6. Consider, and act upon, Resolution 2018-14 requesting approval of the Housing Authority Advisory Board Open Meetings Act. (*Evelyn Huff, Housing Authority Manager*) (Roll Call Vote Required)

7. Consider, and act upon, Resolution 2018-15 requesting approval of HUD Form 50077-CR, Civil Rights Certification. (*Evelyn Huff, Housing Authority Manager*) (Roll Call Vote Required)

8. Approve Resolution No. 2018-19 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed as of April 10, 2018. (*Kathy Gilsdorf, Budget Analyst*) (Roll Call Vote required)

City Attorney Schreiber asked to remove Item 7 from the Consent Calendar.

**Commissioner Hernandez moved to approve items 4, 5, 6, 8 of the consent calendar.
Commissioner Rardin seconded the motion.**

Roll call vote was taken.

Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

7. Consider, and act upon, Resolution 2018-15 requesting approval of HUD Form 50077-CR, Civil Rights Certification. (Evelyn Huff, Housing Authority Manager) (Roll Call Vote Required)

City Attorney Schreiber said there is a typo in the Resolution. She said this item was removed just to fix the error, other than that it is a form that we send in every year for HUD.

Commissioner Hernandez moved to approve as amended.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 7-0-0.

OLD BUSINESS

9. Discussion on Kids Kingdom Rebuild Plan - Timeline and Final Design. (Veronica Ortega, Community Services Director and Nate Tierney, Parks, Playgrounds and Athletic Facilities Design Consultant, with ExerPlay, Inc.)

Community Services Director Ortega showed a Power Point presentation. She reviewed the timeline for the Kids Kingdom Rebuild. She also showed the option 2a which was selected by the Commission. She introduced ExerPlay Territorial Manager Nate Tierney. (See blue book for Power Point).

Mr. Tierney continued with the Power Point Presentation. He gave a brief background on himself. He gave a brief overview of each Evos and Weevos play components. He said the nice thing about the Evos is, when you think about vandalism, it has really good site-line, you can see right through the structure. There are no tunnels to hide in, there are no panels to hide behind and there are not a lot of areas to graffiti either. He said there are rules now for dividing up playgrounds for different age groups. He said there are now required to post signage to dictate what that age group is for each play structure. He showed a video on the Evos and Weevos systems. He talked about the fit-core extreme course for the 13 years or older age group.

City Manager Paluch said this is the adult version of the fit-core extreme and asked for Mr. Tierney to talk about what the City is actually getting. He explained the design layout of the entire playground.

Mayor Boss said this looks a whole lot different than the aerial view.

Commissioner Payne pointed out that she likes the idea of it being all inclusive. She said that is the difference with this design is that, regardless of the child and their capabilities, there is something for everybody. She said probably the audience could not see, but what we saw on our slides, were how it helps with their cognitive skills. She said she has a grandson that has autism and sensory is huge for him, so she likes the idea that it is not just a place to play, but that it is a place for them to learn and to be able to develop those cognitive skills. She also likes the idea that it is covered, because it does get hot out there. She likes that there are no more metal slides.

Mayor Boss said this is probably state of the art as far as safety features.

Mr. Tierney said ASTM has really cracked down on public place spaces and so we are governed by the American Society of Testing materials. There are some very strict rules that didn't use to be in place 10 to 20 years ago. He said to go back to Commissioner Payne's comment on accessibility, the ADA guidelines only state that we have to get a child in a chair up to the playground and that is it. He said that is not enough and that has always been our stance is that we want design an inclusive playground. He said to us, inclusive means a lot more than a child in a wheelchair getting up to the playground.

Commissioner Payne said she really appreciates that. She said there are not a lot of kids that would either wise feel left out, and this really helps that they can be part of what is going on.

City Manager Paluch said one of the other things that staff loved about this playground is the fact there is something for all age groups. She said we don't have this right now in Alamogordo. She said not only is it very inclusive for abilities, but it is also inclusive for all of the age groups.

Commissioner Payne added to be able to play with their peers safely, but she thought that was a huge problem even with Kids Kingdom. She said it was a huge problem that two, three or four-year-old were getting run over by the ten or twelve-year-old, and now it is kind of nice that you can keep them separated, but they can all have fun.

Commissioner Hernandez said he thinks this is the fifth time they are here talking about this and he appreciates Community Services Director Ortega and her team for all the work they have done to get them to this point. He stood up and said none of that money is in my pocket. He said ASTM or ADA things get thrown in, it costs a lot of money. He said there is a lot of research that goes into this stuff that costs money. He said the insurance that they have to buy to produce this stuff, costs money. He said this is actually cheap. He said in the last four meetings, we talked about why we couldn't go back to the original build. He said there were a lot of concerns with young adults, adults hiding in spaces within the areas. He said if you spent anytime there, you could see burn marks where they would burn their cigarettes and stuff, getting high and getting drunk and who knows what else in those hiding spaces. He said the Commission spoke about all that. He said there was something like over 400 comments on social media. He asked the audience how many people were there for the Kids Kingdom issue. He asked the Commission how many hands they count. Commissioner Payne and Sikes responded five. Commissioner Hernandez said there is no where near 50, 20 or 10. He said back to what he said last time, we are here to discuss it and we give them the opportunity over and over again. This Commission does not work off of social media. He said he does not have social media, so it does not do any good for them to post negative or positive comments. He said call us, come to the meetings and tell us what is going on. He said they've had the exact opportunity the last four meetings to tell us what they like and what they don't like.

Commissioner Payne added, this has been going on since last September. She said we've had multiple, intense conversations about this. She agreed, she was really surprised at the comments because it has not been a secret. She said this is public record, you can go to prior minutes and see that the Commission has openly talked about this. She was surprised that people were so upset at something that has been in discussion since last September. She thanked Mr. Tierney for coming and showing the Commission the video. She said she understands about perception and maybe the rendering, but it really helped her to see the video and see the kids playing on all the different components. She said hopefully, she kind of watched the faces in the audience, she thinks it made it more clear for the audience as well.

Commissioner Sikes asked who chooses the colors. Mr. Tierney answered you guys chose the colors. Commissioner Sikes asked about the ground surface. Mr. Tierney said it is an engineered wood fiber. He said this wood fiber has to be certified by ASTM and PIMA. He said it is a wood chip if you will, but it is very specific in size. Commissioner Sikes asked if someone climbed up to the peak of the 17-foot cables and fell, what would happen. Mr. Tierney said they are required to meet a certain fall protection and out of all the protective surfacing, that is known to him and that they offer, the wood fiber protects the best. He said it may not be the easiest to maintain, but it provides the best fall protection. He said the surfacing has to pass a test. He described the process for this test. Commissioner Sikes asked how often will we be replacing these wood chips. Mr. Tierney said his guess is probably every few years, you may need to add an inch or two of wood fiber. He said the chance of you having to take it all out and total refurbish it is slim, but every three or five years you maybe adding a little bit of wood on top. He talked about the testing of some of the components.

Commissioner Rardin asked Mr. Tierney if they have looked at using the rubber chips versus the wood chips, and how much of a cost increase is it to use the rubber chips instead of the wood chips. Mr. Tierney asked if he was talking about the rubber mulch. Commissioner Rardin said yes. Mr. Tierney said you are probably looking at a 30 percent increase in the surfacing. Commissioner Rardin asked if

there was only one slide. Mr. Tierney said there will be one slide for the 5 to 12 and one slide for the 2 to 5 structure.

Mayor Pro-Tem Baldwin thanked Mr. Tierney for the presentation. He said when we find ourselves in a unique situation. The unique situation is there was a pretty demanding outcry from the citizens of Alamogordo and even though there are some good people here to voice their opinion, and one actually did. He said we do have an issue of perception, so he was hoping that we could answer a few of those questions. He said he kind of looks at it as in most people saw it, and it did not look like Kids kingdom, so there is a perception issue of what it actually looks like. He said it does not look like much, no offense. He said it does not look like quantity wise as much as Kids Kingdom did, because Kids Kingdom was a very big solid structure, so the visual was a massive structure. He asked about the square footage in this park in comparison to Kids Kingdom. He said Kids Kingdom was actually going to be smaller in comparison to the footprint of this actual park.

City Manager Paluch said Kids Kingdom, the original park, had a lot of dead space in it. She said Project Manager Balderrama can show or hold up a visual of the amount of dead space that was around Kids Kingdom that wasn't used by play equipment. She said while the Kids Kingdom layout was larger than this playground, again there was dead space around it. She said it had several benches and tables and some wooden shade structures over the tables. She said it is a different layout, is how she would describe it.

Project Manager Balderrama said everybody thinks of Kids Kingdom as everything within the fenced area, which is how Kids Kingdom was defined. He said that was about almost an acre. He described all the dead space throughout Kids Kingdom. He said this playground here, the actual square footage of the play area is a little over 10,000 square area, and that is play area. He said he does not have any drawings to define how big Kids Kingdom was, so he can't compare one to the other.

Mayor Pro-Tem Baldwin said he is also looking at climbable structures, or structures to actually get on and play. He said from the time he did spend time down at Kids Kingdom, he would probably count, on a busy day, 20 to 50 kids in the structure at one time. He asked at your best guess, with the structures that we have, how many kids do you think could be on this safely at one time. Mr. Tierney said you are easily at 50. He said the swings themselves you are probably close to 15. He said he does not think it will be a problem with capacity and then from a warranty or structural integrity standpoint, there is no problem what so-ever. Mayor Pro-Tem Baldwin said correct, he is just trying to address the perception issue, it kind of looks like that 10 kids can be out there at any given time. He said people, again, are used to seeing Kids Kingdom with 20, 30 or 40 kids running around doing all kinds of different things. He believes the structure can handle that much and more. He said he wanted to move on to a couple of things that were said in the comments, he pointed out that he did not read through all of them, just a couple of them. He said we heard tonight why doesn't the City have volunteers building this. He asked City Manager Paluch to answer that.

City Manager Paluch said in the 1990s versus now, times have changed. She said as we know Kids Kingdom was built by a group of community volunteers. She said with the liability issues, how litigious society is right now, the issues to insure the certification of the park and to make sure that all the equipment is installed properly, that has to be done by professionals. She said Leadership Otero has reprinted all of the handprints from the previous park. She said in these designs we do not have a version of the wall, because we need to determine the size of the wall to put all those handprints on, but a portion of Kids Kingdom is going to come back into this park. She said times have changed since the 90s unfortunately, when we could get together and do this big community build which is wonderful, but now everything is so regulated that we need to ensure that our children are safe and that this is installed by professionals.

Mayor Pro-Tem Baldwin said he would like to see a section of it, or a side of it setup for future structures. He mentioned the water park. He said the water park got brought up, not necessarily by the Commission, he thinks by staff and a lot of people got behind the project. He said they reviewed it and they decided

not to do it for multiple reasons. He said his main reason was if they decided to go down the road of a water park, he would prefer it in a better place. He said something that cool needs to be down on White Sands Boulevard or on First Street. He said he is not saying that area is not cool, it is a cool area, but it is kind of hidden in town and if you are passing through or a visitor you might not know how to get to it. He said the idea did cross his mind, what happens if they end up putting it at some point, so some room for improvement and/or some room to make it better, add other options. He said how ever that is possible and it does not actually need to be in this design now, he would like to have that on record that he was always for more structures and more things for the kids to climb on from the beginning.

City Manager Paluch said staff is discussing the very thing that Mayor Pro-Tem Baldwin is addressing. She said we can expand this park, we can add extra play areas to it. She said another thing they are talking about is the possibility of instead of putting a splash park is putting a pond. She said just because Kids Kingdom is going forward at this stage right now, doesn't mean that there aren't things that we can expand in the future. She said staff is aware of that and they will be talking about this in the future too.

Commissioner Wright said another minor part of this and what drives up the cost of this is this is a public project, so he believes it is prevailing wage. He said that prevailing wage is higher than volunteer hours obviously and minimum wage for sure, so that certainly drives the cost up of install.

Commissioner Rardin asked what kind of time frame are we looking at. City Manager Paluch said you are looking at about five to six months for it to be installed. She talked about timing issues with the large shade structures and the actual pavilions themselves. She said those take an extended amount of time to order, receive the material and then install.

Mr. Tierney said the shades and the structures take a while to manufacture and get here. Commissioner Rardin said they are probably custom built as you order them. Mr. Tierney said yes, everything is built specific to the size and nothing is manufactured until we place that order.

Commissioner Rardin asked once you get the material here, how long will it take to erect structures. Mr. Tierney said his hope would be that they would get a lot of the site work done ahead of time. He said the unfortunate thing is we would really like to get those shades up prior to the playground to be able to get up underneath them and run the risk of dropping them onto the playground. He said if we get a lot of the site work done ahead of time, install time with the shades and the playground we are probably looking at a month and a half to two months.

Commissioner Rardin asked if they would be acting as the General Contractor (GC) on the whole project. Mr. Tierney answered yes sir.

NEW BUSINESS

10. Consider, and act upon, the award of Public Works Bid No. 2017-010 to General Hydronics Utilities, LLC., related to Street Maintenance Program FY2017 in an amount not to exceed \$6,017,449.98, including NMGRT. (Edward Balderrama, Project Manager)

Project Manager Balderrama said staff recommends this award. He said we are also recommending a part of the project is the base bid and its additive alternates one through four. He described what areas were included for the base bid and the additive alternates. He said there are 11 streets that are a part of this project. He said this is a very large project, probably the largest Street Maintenance Program (SMP) project that the City has done to date. He said the contract time is 570 calendar days. He said staff is recommending giving the work to General Hydronics. He talked about the scope of work for the project.

Commissioner Rardin asked if the City will utilize Cutler on all of these.

Project Manager Balderrama said the city got away from the Cutler process back in 2014. He said he went out and bid a project just like this and he compared what it cost if the contractor was to do the milling

and paving as part of their project, instead of us going out and piggy backing on the Cutler process, which was done through the State. He said it was cheaper to do it this way. He said the other thing was DOT or the State of New Mexico stopped other entities piggy backing on their agreements, so we had to get away from the Cutler process.

Commissioner Rardin asked what process do we use now.

Project Manager Balderrama said it is the same process.

Commissioner Rardin said it's a mill and fill, it's just not the Cutler process. Project Manager Balderrama said correct.

Commissioner Wright asked if there is a map that is easily accessible for the community to see what streets are being worked on in this project. Project Manager Balderrama said he has a map, but not one that is available to the public.

City Manager Paluch said it is on facebook and it is on the website.

Commissioner Wright said he supports Street Maintenance 100 percent, but at this time he has a conflict of interest here. He said he will abstain from voting.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 6-0-1.

Commissioner Wright abstained.

11. Consider, and act upon, approval of amendment 3 to the Engineering and Professional Services Agreement to Smith Engineering Company related to the McKinley Channel Phase 8 Utility Relocation design. (Nancy Beshaler, Project Manager)

Project Manager Beshaler said this item is for approval of an amendment 3 to Smith Engineering directly related to Corps of Engineers flood control project the next phase, McKinley Channel Phase 8. She said Lt. Colonel Booth has come to address the Commission a couple of times to discuss the need to redesign the channel in order to save money and as a result the design of the utility relocation related to that project has to be re-done and this is what this amendment accomplishes.

Commissioner Hernandez moved to approve.

Commissioner Wright seconded the motion.

Motion carried with a vote of 7-0-0.

12. Consider and act upon first publication of Ordinance 1565 regarding changes to the registration and cost of keeping bees within City limits. (Petria Schreiber, City Attorney) (Roll Call Vote Required)

City Attorney Schreiber talked about changes to the current Ordinance. She said this Ordinance had Code Enforcement actually regulating what was happening with the keeping of bees. She said they have changed that to Planning and Zoning. She said there will be a \$50 registration and application fee. She said the Ordinance states how these bees will be kept and how far they need to be away from other structures. She said there are some research planning, plans that need to be pulled and measurements taken, and it is something that will need to be monitored by the Planning and Zoning Department, so that was the recommendation of a \$50 registration fee.

Commissioner Sikes asked if it was a one-time fee. City Attorney Schreiber answered yes. Commissioner Sikes said this Ordinance has been on the books for a few years, do we have any idea of how many people actually came in and applied to keep bees in their back yards.

City Attorney Schreiber said her office is currently working with several citizens who are going to be applying. She said there will be several others.

Commissioner Rardin said the only reason the Commission tried to regulate this, was so that DPS and Fire knew where they were at in town. He said he kind of disagrees with a \$50 fee. He said if we are that hard up for money and we got two people, we are looking at \$100. He said staff already gets paid to be here and review all this stuff, he really does not think we need a fee on it because of it's original intent. He thinks that they should come in and do the application, so that we still know where they are at. He said that is why he thinks they were under Code Enforcement rather than under Planning and Zoning.

Commissioner Sikes said that was really important, they discussed that, but she thinks the primary reason they wanted to pass this Ordinance was they were the only town in the State of New Mexico that did not allow bee keeping and with the decline of the honey bees dying off it seemed very important to the people who keep bees that we allow it. She said I guess the people who keep bees thought that we would have a lot more people applying to have bees. She said it is not an easy process, when you have to have bee hives and you have to have a certain size lot and you have to make sure that you are complying with all our setbacks and so on to do it. She said a lot of people are put off by it. She said another thing that we discussed five years ago when we did this is, we have Africanized bees in Otero County and we had a lot of them and it was the bee keeper's premise that should we be allowed to keep bees in your back yard that we would dissolve the potency of the Africanized bees by having the kinder and gentler honey bees breeding with them and every six weeks the bees would become less and less dangerous. She said she does not know if that has happened but with one person that is keeping the bees she seriously doubts if it has made much of an impact. She said if you look around at the other Municipalities that allow bee keeping, she does believe that there is a fee when people apply to keep bees. She said she does not think the bee keepers themselves would object to paying a fee, knowing that they are doing everything in compliance with how we want it done. She asked if they have heard any negativity about the amount of money they want to charge.

City Attorney Schreiber said she has not heard any negativity. She said she would tell you that one person that has applied. When she disclosed what was being brought to Commission she did not get any push back from that. She said she did not hear any positive or negative.

Commissioner Rardin motioned to amend with no fee.

City Attorney Schreiber asked if it would read that there is no fee. Commissioner Rardin said we've had what two people apply for this since it has been a draft. City Attorney Schreiber said that we are going to have about 10 people. Commissioner Rardin said so we are looking at \$500. City Attorney Schreiber said her question is how would you like it to read. Commissioner Rardin said he personally does not think that we should be charging a fee. City Attorney Schreiber asked if they should be charged no fee or would you like to go back to the original wording. Commissioner Rardin said he thinks zero is just fine. He said or something less than \$50, he feels like bee keeping isn't a business it is more like a hobby probably. He said we are just feeing the citizens of Alamogordo to death.

Commissioner Payne said she thinks that in the past with this, with other things, we have given a lot away. She does think that it does cost money to operate a City and we have given our citizens no incentive to comply with an Ordinance, we given no incentive to make sure that they are doing things correctly because there are no consequences. She said she does not have a problem with this. She thinks bee keeping is sort of a business, she asked isn't it. She said if they make honey and sell honey, she thinks it's a business. She said the City has got to be a business, we can't continue giving things away and expect that we are going to be able to supply services. She said she understands what Commissioner Rardin is saying but this is just part of that. She said she has no problem with charging them a fee because she does think it is more of an incentive for them to comply with our Ordinance. She thinks if we allow them to just to whatever, there is no incentive there, so she disagrees with that.

Commissioner Rardin moved to approve as amended.

Mayor Pro-Tem Baldwin seconded the motion.

Roll call vote was taken.

Motion failed with a vote of 3-4-0.

Mayor Boss and Commissioners Sikes, Wright, and Payne voted nay.

Commissioner Sikes made a motion to approve as read.

Commissioner Sikes moved to approve.

Commissioner Payne seconded the motion

Roll call vote was taken,

Motion carried with a vote of 4-3-0.

Mayor Pro-Tem Baldwin and Commissioners Rardin and Hernandez voted nay.

13. Approve Land Exchange Agreement between the City of Alamogordo and Alamogordo Public Schools for the exchange of 13th Street owned by the City for a portion of Playa Azul currently owned by Alamogordo Public Schools (*Petria Schreiber, City Attorney*)

City Attorney Schreiber explained the area to be exchanged and explained the appraisal.

Mayor Boss asked if this has come up before. City Attorney Schreiber said the Public Schools has wanted to do this for some time. She said she does not believe that it has come to the Commission previously.

Mayor Pro-Tem Baldwin asked if we brought this to the schools or did the schools bring this to us. City Attorney Schreiber said she believes the schools brought it to us. Mayor Pro-Tem Baldwin asked if they have a plan for that road.

City Manager Paluch answered this topic has been discussed for several years at various meetings with the Schools. She said their plan for 13th Street is to close it and they will be creating additional parking for the schools. She said she believes there will be an entrance still off of Florida, but it will be into a parking lot.

Mayor Boss said it also helps us with the exchange on Playa Azul because it gives us the street which a portion of it is owned by the school district, is that correct.

City Manager Paluch said correct. She said on Playa Azul, the street does run through the residential lot that is there, but when we exchange these two properties, at no point and time could anyone close that section of road because it would be City owned property.

Commissioner Hernandez reminded the Commission when they did Washington extension, on the school's participation. He said his recommendation would be let's take their property and let's keep ours because they owe it to us anyways.

Mayor Pro-Tem Baldwin said that is why he asked the question on who brought it to us.

Commissioner Rardin said very hard to work with, I guess you could say in a nice way, on the Washington extension.

Commissioner Hernandez asked if we have talked to any residents that live in that area. City Manager Paluch asked in Playa Azul.

Commissioner Hernandez said no, on 13th Street. City Manager Paluch answered no. Mayor Boss said 13th Street has been closed for decades. Commissioner Hernandez said it opens in the afternoons and now on the weekends.

Commissioner Rardin asked if staff needs to send out letters, like we do with Planning and Zoning issues to talk with the residents right there on Alaska. City Manager Paluch said she does not believe that is required.

Commissioner Rardin said he would kind of like to get their input because it is closed during the day when school is in session, but nights and weekends it is open.

Commissioner Sikes said that is a really good point. She has been under the assumption that it is closed all the time. She said she thinks it is incumbent upon us to find out how many people actually use that street because this will impact them greatly. She said maybe before we take any action, we might want to find out just how much use that street gets at night and on the weekends. We could test it for a couple of weeks.

City Manager Paluch said we can do traffic counter.

Commissioner Payne asked Commissioner Hernandez if he could bring her up to speed because she did not know what he was talking about.

Commissioner Hernandez said we just talked about it recently in Executive Session. He said whenever we did the Washington Street extension the School was supposed to be involved with us in doing that and we did the project and the Schools told us thank you. He said that was their involvement.

Commissioner Rardin said do we just want to table this item until the next meeting or how long do we need to get numbers on traffic counts.

City Attorney Schreiber asked if the Commission wants staff to send letters to the residents of that area, how many feet are we talking about. She asked if they would like for staff to go out about 250 to 300 feet radius or would you like for staff to send more.

Commissioner Rardin asked what is it that we do for zoning. He asked if it is 500 feet for zoning.

City Manager Paluch said it is 200 feet.

Commissioner Hernandez said put it on facebook, that always works.

Commissioner Rardin said let's just do what we do for zoning stuff. He asked how much time we need to get the traffic numbers.

City Manager Paluch said two weeks for the traffic counters. She said it will take a while because all the letters need to be mailed and then the residents need enough time to respond back.

Commissioner Rardin asked if they should table this to the first meeting in May.

Mayor Boss said we can work the details out.

City Manager Paluch said we will work the details out, but she would say it would probably be the end of May, beginning of June. She said just to make sure that the residents have enough time to be able to respond.

Mayor Boss moved to table.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 7-0-0.

14. Consider and act upon the approval of Resolution 2018-10 approving a GRIP agreement between the City of Alamogordo and Solid Cap Properties, LLC regarding tax abatement for the project to build the Hobby Lobby building. (Petria Schreiber, City Attorney) (Roll Call Vote Required)

Paralegal Williams said they approved the application on Hobby Lobby. She said this is getting more approval on the agreement between the two parties so that we can pay them on this estimated \$67,000. She said this will be calculated based upon the invoices as they come in and we only pay out the taxes that we get.

**Commissioner Rardin moved to approve.
Mayor Pro-Tem Baldwin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.**

15. Appointments to Boards and Committees. (Richard Boss, Mayor)

Mayor Boss read the openings and appointed Joseph Tuttle to the Alamogordo Promotion Board. No one was opposed.

**Commissioner Rardin moved to adjourn at 8:53 p.m.
Commissioner Hernandez seconded the motion.
Motion carried with a vote of 7-0-0.**

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on April 24, 2018.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 03/30/2018

Report No: 3.

Submitted By: Kitty Williams

Subject: Consider, and act upon, final publication of Ordinance 1563 amending Chapter 12 of the Alamogordo Code of Ordinances regarding the Alamogordo Fire Department. (*Petria Schreiber, City Attorney*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for final publication.

Background: Consider, and act upon, final publication of Ordinance 1563 amending Chapter 12 of the Alamogordo Code of Ordinances regarding the Alamogordo Fire Department.

ORDINANCE NO. 1563

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 12 AND MOVING HAZMAT TRANSPORTATION FROM CHAPTER 24 TO CHAPTER 12-05 WITH CERTAIN AMENDMENTS

WHEREAS, corrections are needed in Chapter 12 to change the designation from Department of Public Safety to Alamogordo Fire Department; and

WHEREAS, it was determined to be in the best interest of the citizens that the HazMat Transportation ordinance, be moved from Chapter 24 and placed in Chapter 12-05.

NOW, THEREFORE BE IT ORDAINED that the HazMat Transportation ordinance be moved from Chapter 24 to Chapter 12-05 and is hereby renumbered and amended to read as follows:

BE IT FURTHER ORDAINED that Chapter 12, Fire Prevention and Protection is hereby amended to read as follows:

Chapter 12 - FIRE PREVENTION AND PROTECTION

ARTICLE 12-01. - IN GENERAL

12-01-010. - Improper handling of fire.

(a) Improper handling of fire consists of:

- (1) Setting fire, or causing or procuring a fire to be set to any inflammable vegetation or forest material, growing or being on the lands of another person and without the permission of the owner thereof;
- (2) Allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading;
- (3) Burning any inflammable vegetation or forest material whether upon his own land or that of another person, without using proper and reasonable precaution at all times to prevent the escape of such fire;
- (4) Leaving any campfire burning and unattended upon the lands of another person; or
- (5) Causing a fire to be started in any inflammable vegetation or forest material, growing or being upon the lands of another person, by means of any lighted cigar, cigarette, match or other manner, and leaving such fire unquenched.

Provided, nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning.

(b) It shall be unlawful for any person to commit the offense defined in this section.

12-01-020. - Regulations to control open burning.

- (a) Open burning is any manner of burning not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air.
- (b) Except as otherwise provided under these regulations, no person shall authorize, kindle or maintain any bonfire or rubbish fire.
 - (1) Open burning is permitted for barbecuing, for heating purposes in fireplaces, for the noncommercial cooking of food for human consumption and for warming by small wood fires within metal containers at construction sites.
 - (2) Open burning is permitted for the following purposes when a permit or other proper authorization is obtained from the **Alamogordo Fire Department** ~~department of public safety~~: Weed abatement; prevention of fire hazards; instruction and training of bona fide fire-fighting and fire rescue personnel; civil defense; conservation; game management; disease and pest control; land clearance for highway construction; forestry management; control of vegetation in irrigation ditches and canals; clearance and maintenance of watercourses and flood control channels to eliminate flood hazards; disposal of hydrocarbons spilled or lost from pipeline breaks or other transport failure; for ceremonial purposes; and other special circumstances.
- (c) A permit to burn shall not be issued if the **Alamogordo Fire Department** ~~department of public safety~~ determines that:
 - (1) A practical alternative to burning exists;
 - (2) The health or welfare of any person may be detrimentally affected; or
 - (3) Ambient air quality may be detrimentally affected;
 - (4) Violates state open burning regulations.
- (d) Any person seeking a permit to open burn shall do so by submitting a request to the **Alamogordo Fire Department** ~~department of public safety~~. The department will require the application to be written and it shall contain at least the following information:
 - (1) The requester's name, address and telephone number;
 - (2) The location where the burning is to be conducted;
 - (3) The type and quantity of material to be burned;
 - (4) The date and time when the burning is to be conducted;
 - (5) The methods that will be followed to ignite, maintain and control the burning;
- (e) This section shall apply within the city limits as now in effect or hereafter amended.

ARTICLE 12-02. - CODE ADOPTED

12-02-010. - Generally—International Fire Code Adopted.

- (a) With the exceptions and amendments set forth below, the City hereby adopts by reference the conditions, provisions, limitations and terms of the International Fire Code, 2003 Edition, published by the International Code Council, including any amendments thereto which are adopted by the State as of the date of or subsequent to the date of this section.

(b) Amendments. The following provisions are amended:

(1) *Section 103.1* shall be amended to read:

Sec. 103.1 General

The Division of ~~Fire Prevention~~ fire services is established within the jurisdiction under the direction of the ~~Fire Chief~~ Department of Public Safety. One of the functions of the division shall be the implementation, administration and enforcement of the provisions of this code.

(2) *Section 105.1* shall be amended to read:

Sec. 105.1.

- (a) General fees shall be assessed in accordance with the provision of this section or shall be as set forth in the fee schedule approved by the jurisdiction.
- (b) Permit fees. The fee for each permit shall be as set forth in the current fee schedule approved by the City Commission. The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the permit fee shall be the total value of all work for which the permit is issued.
- (c) Expiration of permit application. Applications for which no permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding one hundred eighty (180) days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new application fee.
- (d) Fees. Work without a permit. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a permit must be obtained before the work is continued. The permit fee will be twice that set forth in the fee schedule for work covered by the permit. For the second offense in a calendar year the permit fee shall be three times that covered in the fee schedule for work covered by the permit. For the third and subsequent offenses in a calendar year the fee shall be four times that covered in the fee schedule for work covered by the permit. The payment of such fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.
- (e) Fees for work performed after hours. Inspections performed outside of normal work hours shall require payment to the City of Alamogordo in the amount of forty dollars (\$40.00) per hour or fraction thereof except that such inspections performed Sundays or on official holidays as recognized by the City of Alamogordo shall require payment to the City of Alamogordo in the amount of seventy dollars (\$70.00) per hour or fraction thereof. Such inspection service shall be based on staff availability. In case of emergency this fee may be waived at the discretion of the City Manager.

- (f) Appendices. Appendices B, C, D, E, F and G to the International Fire Code, 2003 Edition, are specifically adopted by reference, together with all amendments thereto adopted by the State as of or subsequent to the date of this section.
- (g) Appeals. Appeals from orders, decisions or determinations of the building official relative to the application and interpretation of this code shall be submitted to the code writing authority for official interpretation. The official interpretation shall constitute the final decision on any appeal. The "code writing authority" is hereby defined as the entity responsible for the publication of the code for which the interpretation is to be made.

12-012-015. - Generally—NFPA 1 Adopted.

- (a) With the exceptions and amendments set forth below, the City hereby adopts by reference the conditions, provisions, limitations and terms of the NFPA 1 Code, 1997 Edition, published by the National Fire Protection Association, including any amendments thereto which are adopted by the State as of the date of or subsequent to the date of this section.
- (b) Amendments. The following provisions are amended:
 - (1) Section 1-16 shall be amended to read:

Sec. 1-16.

 - (a) General fees shall be assessed in accordance with the provision of this section or shall be as set forth in the fee schedule approved by the jurisdiction.
 - (b) Permit fees. The fee for each permit shall be as set forth in the current fee schedule approved by the City Commission. The determination of value or valuation under any of the provisions of this code shall be made by the Building Official [Code Official]. The value to be used in computing the permit fee shall be the total value of all work for which the permit is issued.
 - (c) Expiration of permit application. Applications for which no permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding one hundred eighty (180) days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new application fee.
 - (d) Fees. Work without a permit. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a permit must be obtained before the work is continued. The permit fee will be twice that set forth in the fee schedule for work covered by the permit. For the second offense in a calendar year the permit fee shall be three times that covered in the fee schedule for work covered by the permit. For the third and subsequent offenses in a calendar year the fee shall be four times that covered in the fee schedule for work covered by the permit. The payment of such fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

- (e) Fees for work performed after hours. Inspections performed outside of normal work hours shall require payment to the City of Alamogordo in the amount of forty dollars (\$40.00) per hour or fraction thereof except that such inspections performed Sundays or on official holidays as recognized by the City of Alamogordo shall require payment to the City of Alamogordo in the amount of seventy dollars (\$70.00) per hour or fraction thereof. Such inspection service shall be based on staff availability. In cases of emergency this fee may be waived at the discretion of the City Manager.
- (c) Appendices. Appendices A, B, C and D to the NFPA 1, 1997 Edition, are specifically adopted by reference, together with all amendments thereto adopted by the State as of or subsequent to the date of this section.
- (d) Appeals. Section 1-8.1 through 1-8.6.2 are amended to read that appeals from orders, decisions or determinations of the Building Official relative to the application and interpretation of this code shall be submitted to the code writing authority for official interpretation. The official interpretation shall constitute the final decision on any appeal. The "code writing authority" is hereby defined as the entity responsible for the publication of the code for which the interpretation is to be made.

12-02-020. - Definitions.

- (a) The term "fire marshal" used in this chapter shall mean ~~any fire staff the officer of the Alamogordo Fire Department fire services division of the department of public safety~~ who has been appointed by the ~~Fire Chief director, department of public safety,~~ to enforce the provisions of the International Fire Code, 2003 Edition. The term "fire marshal" shall also mean "chief of the bureau of fire prevention" as those words are used in the International Fire Code, 2003 Edition.
- (b) The term "jurisdiction" as used in the International Fire Code, 2003 Edition shall mean the City of Alamogordo, New Mexico.
- (c) The term "bureau of fire prevention" as used in the International Fire Code, 2003 Edition shall mean the ~~Alamogordo Fire Department fire services division of the department of public safety,~~ City of Alamogordo, New Mexico.

12-02-030. – ~~Fire Department Fire services division of the department of public safety.~~

- (a) The International Fire Code, 2003 Edition shall be enforced by the ~~Alamogordo Fire Department fire services division of the department of public safety,~~ which is hereby established and which shall be operated under the supervision of the ~~Fire Chief director, department of public safety.~~
- (b) The fire marshal shall be appointed by the ~~Fire Chief director, department of public safety.~~ The ~~Fire Chief director, department of public safety~~ may detail such members of the ~~Alamogordo Fire Department department of public safety~~ as fire inspectors as shall, from time to time, be necessary.

12-02-040. - New materials, processes or occupancies which may require permits.

The building inspector and the fire marshal shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies for which permits are required in addition to those now enumerated in the

International Fire Code, 2003 Edition. The fire marshal shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons.

12-02-050. - Appeals from decisions of the fire marshal.

Whenever the fire marshal disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the International Fire Code, 2003 Edition do not apply or that the true intent and meaning of the Fire Code, 2003 Edition have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire marshal within thirty (30) days from the date of the decision. The fire marshal shall submit the appeal in writing to the code writing authority for official interpretation. The official interpretation shall constitute the final decision on any appeal.

12-02-060. - Storage of flammable or combustible liquids in outside aboveground tanks.

The storage of flammable or combustible liquids in outside aboveground tanks is prohibited, except those facilities constructed in accordance with the provisions of section 3404 of the International Fire Code, 2003 Edition.

12-02-070. - Liquefied petroleum gases.

The limits referred to in Chapter 38 of the International Fire Code, 2003 Edition, in which storage of liquefied petroleum gas is restricted, are hereby established as follows: All of the City, except that part west of the Southern Pacific Railroad tracks which is within an industrial zoning area.

ARTICLE 12-03. - EXPLOSIVES

12-03-010. - Applicability.

This article shall apply to all explosives except those enumerated in section 3304.1 of the International Fire Code.

12-03-020. - Manufacture or storage prohibited; transporting through city restricted.

The manufacture or storage of explosives within the limits of the City is prohibited. A permit shall be obtained from the Fire Chief to transport any explosives in or through the City.

12-03-030. - Transportation regulations.

- (a) It shall be unlawful for any person in charge of a vehicle containing explosives to smoke in, upon or near such vehicle; or to drive, load or unload the vehicle in a careless or reckless manner.
- (b) It shall be unlawful to operate any vehicle containing explosives on any street in the City except in compliance with the following rules:
 - (1) No such vehicle shall be so operated unless it is marked, loaded and equipped in full compliance with all laws of the state relating thereto.
 - (2) No trailer shall be used for the conveyance of explosives in the City but semitrailers as defined by statute may be so used.
 - (3) No vehicle carrying explosives shall be parked or permitted to stand anywhere in the City longer than is necessary to make a lawful delivery; provided that, the standing of such vehicle made necessary by mechanical trouble, traffic conditions, accident or in

obedience to the direction of a police officer or traffic signals shall not be considered a violation of this section.

ARTICLE 12-04. - FIREWORKS

12-04-010. - Definitions.

The following terms are defined for the purpose of this article:

Aerial Device shall be defined as a fireworks device that, upon ignition, propels itself or an insert more than ten (10) feet into the air, but does not include a firework that produces a shower of sparks. Aerial Device includes, but is not limited to, sky rockets and bottle rockets, missile-type rockets, helicopters, spinners, Roman candles, mines and shells.

Fireworks shall be defined as any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation.

Ground Audible Device shall be defined as a fireworks device intended to function on the ground and produce an audible explosion sound louder than a paper pistol cap.

Permissible Fireworks shall be defined as fireworks which are legal for sale and use in New Mexico under the provisions of the Fireworks Licensing and Safety Act.

SECTION FIFTEEN

12-04-015. - Dates of use.

No person may use or set off any fireworks except from June 20 to July 8, December 28 to January 3, May 2 to 7 and the three days preceding and including Chinese New Year and the two days following that date.

12-04-020. - Sale or use prohibited.

- (a) It shall be unlawful for any person to sell, offer to sell, possess, transport or discharge any fire-crackers or any type or form of explosives commonly known as fire-works unless such item is a permissible fireworks and is not an aerial device or a ground audible device.
- (b) It shall be unlawful for any person to sell permissible fireworks without first obtaining a City permit.
- (c) It is unlawful to offer for sale or to sell any fireworks to children under the age of twelve years, or to any intoxicated person.
- (d) No fireworks shall be stored, kept, sold, or discharged within fifty feet of any gasoline pump, or gasoline bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints, and oils are handled in sealed containers only.
- (e) No fireworks shall be discharged within one hundred fifty feet of any fireworks retail sale location.
- (f) No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of people.

12-04-030. - Exceptions.

- (a) Nothing in this article shall be held to apply to the possession or daily use of signaling devices by railroads or other transportation companies.
- (b) The City Manager may, upon due application, issue a City permit to persons, who in the opinion of the City Manager are properly qualified, authorizing the sale of fireworks other than aerial devices or ground audible devices. The City Manager may also, upon due application, issue a City permit to a properly qualified person, authorizing the conduct of a pyrotechnic display in the public parks or other open places.

12-04-040. - Permit.

- (a) An applicant for a City permit to sell any fireworks or for a City permit to conduct a pyrotechnic display in the parks or other open places shall complete an application in the form prescribed by the City Manager. The application form shall require an applicant to provide certain information including, but not limited to, tax identification numbers. The failure of an applicant to fully and correctly complete the application form shall result in the denial or revocation of the City permit.
- (b) The application shall be accompanied by evidence of the payment of the City permit fee in the amount of twenty-five dollars (\$25.00), which City permit fee shall not be refundable.
- (c) The applicant shall be required to agree, as a condition to the granting of the City permit, to comply with the provisions of all the Fireworks Licensing and Safety Act (§ 60-2C-1 et seq. N.M.S.A. 1978), as may be amended from time to time and all City Ordinances including, but not limited to, those relating to the licenses required for commercial solicitors and the payment of business registration fees. The failure of an applicant to comply with any provision of statute or City Ordinance shall result in the denial or revocation of the City permit.
- (d) City permits shall be issued for one (1) year beginning on February 1 of each year. No application for a City permit shall be processed from May 10 through July 10 of each year.

Chapter 12-05 - HazMat Transportation

~~24-01-140~~ 12-05-010. - Title.

Sections ~~24-01-140~~ 12-05-010 through ~~24-01-230~~ 12-05-100 shall be known as the HazMat Transportation Ordinance.

~~24-01-150~~ 12-05-020. - Effective date.

Sections ~~24-01-140~~ 12-05-010 through ~~24-01-230~~ 12-05-100 shall become effective July 1, 2005 or 30 days after its enrollment on the records of the city clerk, whichever shall later occur.

~~24-01-160~~ 12-05-030. - Hazardous materials/chemicals/wastes defined.

Sections ~~24-01-140~~ 12-05-010 - ~~24-01-230~~ 12-05-100 shall apply to all hazardous materials, hazardous chemicals or hazardous wastes which have been defined as such by the Environmental Protection Agency of the United States, or the United States Department of Transportation, or the State of New Mexico Environment Department and are required to be placarded during transportation.

~~24-01-170~~ 12-05-040. - Applicability.

Transporters carrying less than three thousand five hundred (3,500) gallons and delivering hazardous cargo locally, are not required to follow the hazardous cargo routing. However, good judgment should be used in routing deliveries not necessarily by the shortest route but by the route less hazardous to the local community.

With the exception of those transporters delivering hazardous cargo to local business, all other transporters will use the hazardous cargo routing as designated in sections ~~24-01-180~~ **12-05-050** and ~~24-01-190~~ **12-05-060**. White Sands Boulevard is the U.S. Highway 54/70 business route and a designated hazardous cargo route. White Sands Boulevard also provides food, lodging, fuel and other services for transporters. Those transporters who are not seeking food, lodging, fuel or other services shall use the Highway 54/70 Relief Route around the city. Vehicles transporting hazardous cargo shall maintain proper shipping documents and placarding in accordance with DOT Regulations.

~~24-01-180~~ **12-05-050. - Preferred primary hazardous cargo route.**

Upon reaching the Highway 54/70 (South) or the Highway 54/82 (North) intersections, hazardous cargo transporters, with the exception of those making local deliveries or seeking local services, are required to use the Highway 54 Relief Route around the City of Alamogordo.

~~24-01-190~~ **12-05-060. - Approved hazardous cargo secondary routes.**

These routes are established for those hazardous cargo transporters with capacities over three thousand five hundred (3,500) gallons making local deliveries within the city limits. The official map designating secondary routes will be maintained at the office of the city clerk.

In the event that the Highway 54 Relief Route is temporarily closed due to accident or other situations, hazardous cargo will be routed on White Sands Boulevard through the city.

~~24-01-200~~ **12-05-070. - Appropriate procedures to be followed.**

It shall be unlawful for any person to drive or cause to be driven, operate or maintain any motor vehicle, truck, trailer or any other vehicle having thereon or attached thereto, a tank or other receptacle used for the transporting of any hazardous cargo over any street, highway or alley other than as provided above.

Traffic will be temporarily re-routed onto White Sands Boulevard if the Highway 54 Relief Route is determined by the NM State Police, NM State Highway Department or the ~~Alamogordo Department of Public Safety~~ **Alamogordo Police Department**, to be impassible.

Except for transporters making pick-ups or deliveries or requiring food, lodging, fuel or other services, it shall be unlawful for any person to park or cause to be parked or to maintain any motor vehicle, truck, trailer, or any other vehicle containing hazardous cargo on any highway, street, alley, public place or at any place along the primary or secondary hazardous cargo routes. This shall not apply to the stopping of any vehicle at a repair facility due to breakdown occurring on the designated streets or highways of the primary or secondary routes. Under these circumstances, the vehicle shall not remain at the service station or garage longer than thirty (30) minutes unless the department of public safety is notified of the same.

Trouble causing forced stoppage; conditions allowing repairs on street: When any truck, trailer, motor vehicle or any other form of vehicle used for transporting any hazardous cargo has mechanical problems, experiences a flat tire, needs repairs, needs fuel for its own propulsion to the extent that it cannot be propelled with its own power, then the necessary repairs can be made where the vehicle has been forced to stop, provided the vehicle can be repaired within a period of two (2) hours. The driver of the vehicle shall immediately notify the department of public safety regarding the forced stoppage.

Mechanical problems requiring towing; police direction: When any truck, trailer, motor vehicle or any other form of vehicle containing any hazardous cargo has broken down and is in need of repairs to the extent that the vehicle cannot be repaired within two (2) hours, the department of public safety shall be notified immediately. Notice shall be given that the vehicle is being removed from the place of stoppage or breakdown to a garage or some other repair facility and if necessary, shall be moved under the direction of the department of public safety.

~~24-01-210~~ ~~12-05-080~~. - Duties.

The ~~director~~ Fire Chief of the ~~department of public safety~~ Alamogordo Fire Department may assign such number of officers, inspectors, assistants, and other employees as shall be authorized from time to time to enforce these sections.

The ~~director~~ Fire Chief of the ~~department of public safety~~ Alamogordo Fire Department, or his authorized representatives, may conduct inspections to enforce any provision of this ordinance. These inspections shall be conducted to enforce the provisions of this ordinance, or any other applicable state or federal law, pertaining to environmental, public health or safety matters regarding the transportation, storage, handling, use, dispensing or disposing of hazardous materials or hazardous waste.

~~24-01-220~~ ~~12-05-090~~. - Inspections.

The ~~director~~ Fire Chief of the ~~department of public safety~~ Alamogordo Fire Department may cause to be inspected any hazardous cargo transporter for the purpose of ascertaining and causing to be corrected, any conditions which would reasonably tend to endanger human health, the environment or public safety.

All transport vehicles that appear to be unsafe or are operated in an unsafe manner shall be stopped and inspected to ensure safe operation, transport and delivery of the hazardous cargo/materials.

~~24-01-230~~ ~~12-05-100~~. - Penalties.

Violations of these sections shall be punishable according to the standard penalty provisions of the Code of Ordinances. If the violation is knowing, intentional or reckless, such violation shall be punishable to the maximum extent permitted, under the laws of the state and the ordinances of the city. Failure to post any required placarding or to maintain proper manifesting records are declared to be separate violations and shall be enforced by appropriate authorities.

Chapter 12-06 – Fees and Fines

12-06-010. – Fees.

- A. The fee for an initial fire inspection of a new business shall be fifteen dollars (\$15), which shall be incorporated in the business license fee upon application. (Reference §17-01-030). The initial follow-up inspection on items identified during initial business inspection shall be free.
- B. The fee for a burn permit shall be fifteen dollars (\$15).

12-06-020. – Fines.

Any additional follow-up inspections necessary shall be fined as follows:

- (1) Second follow-up: \$250
- (2) Third follow-up: \$375
- (3) Fourth follow-up: \$500.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date:

Report No: 4.

Submitted By: Veronica Ortega

Subject: Consider, and act upon, award IFB 2018-02 Miscellaneous Foods, Dairy Products & Items for the Alamogordo Senior Center Program to multiple vendors in the amount not exceed \$177,419.52. (Veronica Ortega, Community Services Director)

Fiscal Impact:

Amount Budgeted: \$65,000.00
\$55,000.00
Fund: 071-8024-445-3260
071-8023-445-3260

Additional Fiscal Impact:

Recommendation: Award Sysco NM (188) One hundred Eighty eight items for an estimated total \$113,637.74. Award Shamrock Foods (74) Seventy four items for an estimated total \$42,727.69. Award Ben E. Keith (48) Forty eight items for an estimated total \$11,594.80. Award Prices Creameries (6) Six items for an estimated total of \$9,459.29.

Bid amount estimated total \$177,419.52

Background: IFB 2018-02 was advertised February 25, 2018 and opened March 27 2018. Four (4) responsive bids were received. This IFB is awarded on an "item by item" basis to the low bidder meeting specifications and requirements. Award will be fixed price, estimated quantity for a six (6) month period commencing May 1st, 2018 through October 31, 2018.

Fiscal impact will be no more than budget. Total estimated bid of \$177,419.52 is based on maximum bid quantities. Orders are placed as items are needed, and will not exceed fiscal years budget.

Bid Tabulation attached

Item	Est. Qty	Size	Description	Shamrock Foods		Ben E Keith		Sysco		Prices Creameries	
1	20	6 - #10/per cs	Apples-sliced-solid pk-in water	\$39.77	\$795.40	\$31.48	\$629.68	\$36.60	\$732.00		
2	20	6 - #10/per cs	Applesauce, unsweetened	\$25.95	\$519.00	\$25.52	\$510.32	\$26.44	\$528.80		
3	8	6 - #10/per cs	Applesauce, Chunky	\$51.04	\$408.32	N/A	N/A	No Bid	No Bid		
4	72	6 - #10/per cs	Apricot-Halves-in light syrup	\$44.50	\$3,204.00	\$41.49	\$2,987.61	\$37.87	\$2,726.64		
5	18	6 - #10/per cs	Cherries-pitted-red-tart-in water	\$20.92	\$376.56	N/A	N/A	No Bid	No Bid		
6	6	6 - #10/per cs	Cranberry Sauce - whole	\$45.73	\$274.38	\$39.92	\$239.52	\$35.93	\$215.58		
7	6	10 #/per cs	Coconut-shredded	\$26.05	\$156.30	\$29.44	\$176.65	\$19.08	\$114.48		
8	30	6 - #10/per cs	Mixed Fruit - in light syrup	\$28.59	\$857.70	\$38.27	\$1,148.06	\$34.63	\$1,038.90		
9	10	6 - #10/per cs	Oranges-Mandarin-in water	\$30.00	\$300.00	\$27.96	\$279.57	\$24.71	\$247.10		
10	72	6 - #10/per cs	Peaches-diced-in light syrup	\$39.31	\$2,830.32	\$36.12	\$2,600.52	\$25.85	\$1,861.20		
11	72	6 - #10/per cs	Pears-diced-in light syrup	\$36.40	\$2,620.80	\$37.88	\$2,727.48	\$40.56	\$2,920.32		
12	24	6 - #10/per cs	Pineapple-crushed-light syrup	\$28.16	\$675.84	\$36.40	\$873.55	\$28.96	\$695.04		
13	24	6 - #10/per cs	Pineapple-tidbits-light syrup	\$30.45	\$730.80	\$32.74	\$785.81	\$24.31	\$583.44		
14	9	6 - #10/per cs	Plums-Purple-heavy syrup	\$32.08	\$288.72	\$42.43	\$381.87	\$33.95	\$305.55		
15	4	24 - 1 #/per cs	Raisins-seedless	\$69.58	\$278.32	\$43.70	\$174.80	\$42.11	\$168.44		
16	72	6 - #10/per cs	Tropical-Fruit-in light syrup	\$35.16	\$2,531.52	\$43.34	\$3,120.77	\$40.77	\$2,935.44		
17	5	12 - 32 oz/per cs	Juice - Lemon	\$36.38	\$181.90	N/A	N/A	\$23.64	\$118.20		
18	5	12 - 46 oz/per cs	Juice - Pineapple	\$37.44	\$187.20	\$23.37	\$116.83	\$22.34	\$111.70		

19	6	6 - #10/per cs	Pie - Filling - Apple	\$56.34	\$338.04	\$47.44	\$284.65	\$35.62	\$213.72		
20	6	6 - #10/per cs	Pie - Filling - Cherry	\$89.75	\$538.50	\$47.44	\$284.65	\$50.37	\$302.22		
21	6	6 - #10/per cs	Pie - Filling - Peach	\$84.69	\$508.14	\$65.58	\$393.48	\$47.69	\$286.14		
22	750	50 #/per bag	Beans - Northern-White-Medium-Cleaned	\$19.00	\$14,250.00	N/A	N/A	\$26.14	\$19,605.00		
23	6	6 - #10/per cs	Beans - Pinto-Dry-Triple Cleaned	\$24.10	\$144.60	\$23.01	\$138.06	\$28.97	\$173.82		
24	6	6 - #10/per cs	Beans - Pork-N-Beans	\$21.38	\$128.28	\$29.47	\$176.84	\$20.73	\$124.38		
25	6	6 - #10/per cs	Beans - Ranch - Style - in sauce	\$36.00	\$216.00	\$33.37	\$200.19	\$22.23	\$133.38		
26	15	6 - #10/per cs	Beans - Three-Bean-Salad	\$29.40	\$441.00	N/A	N/A	\$43.71	\$655.65		
27	15	6 - #10/per cs	Beets-Sliced-in juice	\$27.21	\$408.15	\$36.08	\$541.13	\$24.86	\$372.90		
28	5	6 - #10/per cs	Beets-Sliced- Pickled -in juice	\$30.31	\$151.55	N/A	N/A	\$30.95	\$154.75		
29	6	6-#10/per cs	Hominy-White-plain	\$21.98	\$131.88	\$23.38	\$140.26	\$16.94	\$101.64		
30	3	6 - #10/per cs	Mushrooms - Stems & Pieces	\$36.02	\$108.06	\$35.20	\$105.61	\$20.67	\$62.01		
31	15	6 - #10/per cs	Peas - Blackeyed, no snaps	\$23.57	\$353.55	\$27.47	\$412.10	\$25.15	\$377.25		
32	5	6 - #10/per cs	Peppers - Jalapeno - Sliced	\$23.25	\$116.25	\$17.75	\$88.76	\$24.26	\$121.30		
33	6	6 - #10/per cs	Potato-Instant Granules- Complete	\$52.16	\$312.96	\$50.43	\$302.58	\$43.41	\$260.46		
34	27	6 - #10/per cs	Potato - Sweet - cut - in syrup	\$43.99	\$1,187.73	\$35.39	\$955.45	\$27.89	\$753.03		
35	6	6 - #10/per cs	Sauerkraut-shredded	\$27.56	\$165.36	\$29.72	\$178.32	\$26.29	\$157.74		
36	5	6 - #10/per cs	Tomato - Ketchup	\$27.87	\$139.35	\$23.31	\$116.56	\$20.61	\$103.05		
37	4	6 - #10/per cs	Tomato - Pizza - Sauce	\$25.88	\$103.52	\$27.63	\$110.54	\$23.75	\$95.00		
38	4	6 - #10/per cs	Tomato - Spaghetti - Sauce	\$38.92	\$155.68	\$25.41	\$101.63	\$21.11	\$84.44		

39	10	6-#10/per cs	Tomato - Paste	\$33.21	\$332.10	\$31.32	\$313.23	\$28.44	\$284.40		
40	10	6 - #10/per cs	Tomato - Sauce	\$22.71	\$227.10	\$19.34	\$193.44	\$24.06	\$240.60		
41	15	6 - #10/per cs	Tomato - Stewed	\$25.53	\$382.95	\$21.78	\$326.77	\$24.14	\$362.10		
42	10	48 - 6 oz/per cs	Juice - Tomato - low-sodium	\$21.05	\$210.50	\$18.06	\$180.65	\$14.41	\$144.10		
43	10	48-6 oz/per cs	Juice - V8 - low-sodium	\$25.75	\$257.50	N/A	N/A	\$22.61	\$226.10		
44	5	6 - 5#/boxes	Cake-Chocolate	\$69.69	\$348.45	\$41.08	\$205.38	No Bid	No Bid		
45	5	6 - 5#/boxes	Cake-Spice	\$66.73	\$333.65	N/A	N/A	\$51.03	\$255.15		
46	5	6 - 5#/boxes	Cake-White	\$24.05	\$120.25	\$40.05	\$200.25	\$21.15	\$105.75		
47	5	6 - 5#/boxes	Cake-Yellow	\$71.50	\$357.50	\$40.70	\$203.49	\$21.15	\$105.75		
48	6	6-24 oz./per cs	Gravy - Beef - low-sodium	\$26.98	\$161.88	\$18.12	\$108.71	\$28.89	\$173.34		
49	6	6-24 oz./per cs	Gravy - Chicken - low-sodium	\$27.20	\$163.20	N/A	N/A	\$34.43	\$206.58		
50	6	6-24 oz./per cs	Gravy - Turkey - low-sodium	\$27.64	\$165.84	\$17.53	\$105.16	\$15.19	\$91.14		
51	6	6-24 oz./per cs	Gravy - White - low-sodium	\$19.24	\$115.44	\$14.67	\$88.00	\$13.30	\$79.80		
52	5	6 - 5#/boxes	Mix-Biscuit	\$32.32	\$161.60	\$24.11	\$120.54	\$27.23	\$136.15		
53	5	6 - 5#/boxes	Mix - Brownie	\$79.51	\$397.55	\$41.02	\$205.11	\$48.76	\$243.80		
54	5	6 - 5#/boxes	Mix - Cornbread	\$34.85	\$174.25	\$28.98	\$144.89	\$25.82	\$129.10		
55	5	6-5#/boxes	Mix - Muffin - Variety	No Bid	No Bid	N/A	N/A	\$52.00	\$260.00		
56	5	6 - 5#/boxes	Mix - Potato - Au gratin	\$56.58	\$282.90	\$46.91	\$234.57	\$46.20	\$231.00		
57	5	6 - 5#/boxes	Mix - Potato - Scalloped	\$55.17	\$275.85	\$53.37	\$266.83	\$46.20	\$231.00		
58	5	6 - 5#/boxes	Mix-Stuffing-Uncle-Ben's-or-equal-large-bag	\$49.07	\$245.35	\$51.61	\$258.06	\$51.59	\$257.95		

59	5	50 # sack	Flour-Whole-Wheat	\$16.47	\$82.35	\$12.23	\$61.13	\$68.02	\$340.10		
60	25	50 # sack	Flour-White-All-Purpose	\$17.19	\$429.75	\$12.66	\$316.40	\$12.87	\$321.75		
61	10	25 # sack	Cornmeal-Yellow	\$9.66	\$96.60	\$9.14	\$91.40	\$9.26	\$92.60		
62	2	25 # sack	Rice - Brown	\$28.60	\$57.20	\$27.59	\$55.18	\$12.61	\$25.22		
63	6	25 # sack	Rice-Long-Grain- Wild	\$39.59	\$237.54	\$30.99	\$185.94	\$24.31	\$145.86		
64	10	25 # sack	Rice-Parboiled	\$13.32	\$133.20	\$10.30	\$103.01	\$9.57	\$95.70		
65	5	5 #/cont	Rice-Instant	\$37.14	\$185.70	N/A	N/A	No Bid	No Bid		
66	2	5 #/cont	Baking - Powder	\$6.75	\$13.50	N/A	N/A	\$51.91	\$103.82		
67	1	24 - 1#/box	Baking - Soda	\$15.52	\$15.52	\$15.65	\$15.65	\$14.51	\$14.51		
68	5	24 - 1#/box	Cornstarch	\$16.90	\$84.50	\$16.95	\$84.73	\$15.69	\$78.45		
69	3	20 - 1#/box	Yeast	\$51.00	\$153.00	\$53.33	\$160.00	\$51.38	\$154.14		
70	9	200-2ct/case	Crackers - Low Sodium - Wheat	No Bid	No Bid	N/A	N/A	\$17.88	\$160.92		
71	10	500 - 2 ct/ case	Crackers - Saltines	\$12.66	\$126.60	\$14.19	\$141.94	\$8.57	\$85.70		
72	10	6 - 1 #/ case	Base - Beef - low-sodium	\$30.15	\$301.50	\$38.23	\$382.26	\$40.65	\$406.50		
73	10	6 - 1 #/ case	Base - Chicken - Low-sodium	\$40.80	\$408.00	\$26.85	\$268.49	\$34.23	\$342.30		
74	10	6 - 1 #/ case	Base - Turkey - Low-sodium	\$47.88	\$478.80	N/A	N/A	No Bid	No Bid		
75	10	12 - 50 oz/case	Soup-Cream-of-Chicken	\$45.41	\$454.10	\$40.82	\$408.17	\$30.75	\$307.50		
76	10	12 - 50 oz/case	Soup-Cream-of-Mushroom	\$45.00	\$450.00	\$40.49	\$404.95	\$30.47	\$304.70		
77	5	12 - 50 oz/case	Soup-Cream-of-Tomato	\$34.17	\$170.85	\$37.48	\$187.42	\$23.48	\$117.40		
78	5	24-20 oz/case	Coffee Creamer - canister	\$28.26	\$141.30	\$35.29	\$176.45	\$28.51	\$142.55		

79	5	200 ct/case	PC - Tartar - Sauce	\$9.97	\$49.85	\$16.57	\$82.85	\$19.85	\$99.25		
80	5	200 ct/case	PC - Ranch - Dressing	\$22.87	\$114.35	\$17.16	\$85.81	\$5.62	\$28.10		
81	5	200 ct/case	PC - French - Dressing	\$13.10	\$65.50	N/A	N/A	\$15.59	\$77.95		
82	5	200 ct/case	PC - Italian - Dressing	\$34.62	\$173.10	N/A	N/A	\$26.11	\$130.55		
83	5	200 ct/case	PC - Thousand - Island - Dressing	\$13.78	\$68.90	\$7.19	\$35.97	\$18.36	\$91.80		
84	5	200 ct/case	PC - Mayonaise - Packets	\$10.08	\$50.40	\$12.41	\$62.04	\$8.45	\$42.25		
85	5	200 ct/case	PC - Mustard - Packets	\$6.34	\$31.70	\$5.94	\$29.68	\$4.52	\$22.60		
86	5	200 ct/case	PC - Ketchup - Packets	\$24.66	\$123.30	\$10.28	\$51.40	\$15.16	\$75.80		
87	5	200 ct/case	PC - Sweet - Relish	\$13.73	\$68.65	\$13.92	\$69.62	\$17.76	\$88.80		
88	5	200 ct/case	PC - Assorted - Jellies	\$12.46	\$62.30	\$11.48	\$57.42	\$5.66	\$28.30		
89	5	2/1250/ case	PC - Sweet-n-Low-Packets	\$14.84	\$74.20	\$13.61	\$68.06	\$9.68	\$48.40		
90	5	2000/case	PC - Sugar - Packets	\$11.88	\$59.40	\$12.94	\$64.68	\$8.76	\$43.80		
91	5	100 ct/case	PC - Peanut Butter - Packets	\$40.54	\$202.70	\$39.01	\$195.05	\$13.89	\$69.45		
92	5	100 ct/case	PC - Cheddar Cheese - Packets	No Bid	No Bid	N/A	N/A	\$15.70	\$78.50		
93	15	600 ct/case	PC - Promise-Margarine-or-equal	\$23.94	\$359.10	\$28.36	\$425.38	\$14.41	\$216.15		
94	20	30 - 1 #/case	Margarine - Solids	\$24.88	\$497.60	\$21.93	\$438.70	\$25.11	\$502.20		
95	4	3/1gallon	Liquid Butter	\$34.54	\$138.16	\$31.40	\$125.61	\$30.39	\$121.56		
96	20	3/1 gallon	Olive Oil	\$17.01	\$340.20	\$79.57	\$1,591.30	\$48.06	\$961.20		
97	6	35#/case	PV - Liquid -Shortening	\$22.97	\$137.82	\$20.32	\$121.89	\$19.73	\$118.38		
98	20	6ct/case	Vegelene -Pan Spray - Can - Original due to waste	\$17.22	\$344.40	\$27.28	\$545.65	\$11.96	\$239.20		

99	5	24-20 oz/case	Sugar - Granulated - cannister	\$37.72	\$188.60	\$41.01	\$205.05	\$59.06	\$295.30		
100	10	50 #/sack	Sugar - Granulated	\$27.46	\$274.60	\$23.24	\$232.39	\$24.19	\$241.90		
101	5	12 - 2 #/case	Sugar - Brown	\$30.61	\$153.05	\$25.59	\$127.93	\$24.67	\$123.35		
102	5	4 - 1 gal/case	LowFat -Coleslaw-Dressing	\$34.27	\$171.35	N/A	N/A	\$28.73	\$143.65		
103	5	4 - 1 gal/case	FatFree - Italian - Salad - Dressing	\$25.95	\$129.75	\$23.54	\$117.69	\$22.76	\$113.80		
104	5	4 - 1 gal/case	LowFat - French - Salad - Dressing	\$32.23	\$161.15	N/A	N/A	\$24.11	\$120.55		
105	5	4 - 1 gal/case	LowFat - Raspberry - Vinegarette	\$22.27	\$111.35	\$37.19	\$185.97	\$43.62	\$218.10		
106	5	4 - 1 gal/case	LowFat - Thousand - Island	\$36.76	\$183.80	N/A	N/A	\$27.55	\$137.75		
107	5	4 - 1 gal/case	LowFat - Mayonaise	\$25.32	\$126.60	\$40.51	\$202.53	\$25.99	\$129.95		
108	5	18 - 3.2 oz/case	Ranch - Dressing - Mix	\$20.11	\$100.55	\$23.74	\$118.71	\$15.90	\$79.50		
109	10	6 - 5 #	Honey	\$86.47	\$864.70	\$23.74	\$237.42	\$68.02	\$680.20		
110	4	12 - 12 oz	Tabasco - Sauce	\$153.91	\$615.64	\$66.28	\$265.13	\$64.87	\$259.48		
111	2	6 - #10/case	Mustard - Yellow - Prepared	\$18.56	\$37.12	\$65.57	\$131.14	\$11.61	\$23.22		
112	2	4 - 1 gal/case	Vinegar - Distilled - White	\$6.69	\$13.38	\$6.74	\$13.48	\$11.29	\$22.58		
113	2	4 - 1 gal/case	Vinegar - Apple-Cider	\$28.18	\$56.36	\$26.28	\$52.56	\$14.57	\$29.14		
114	2	4 - 1 gal/case	Relish - Pickle	\$24.98	\$49.96	\$26.81	\$53.61	\$21.37	\$42.74		
115	2	4 - 1 gal/case	Relish - Sweet	\$27.23	\$54.46	\$28.44	\$56.88	\$25.72	\$51.44		
116	5	12 - 1 #/case	Marshmallow - MINI	\$19.56	\$97.80	\$22.09	\$110.43	\$19.69	\$98.45		
117	5	6 #/case	Nuts - Almond - Sliced	\$53.39	\$266.95	\$38.24	\$191.18	\$37.71	\$188.55		
118	5	6 #/case	Nuts - Walnut - pieces	\$52.79	\$263.95	\$32.38	\$161.88	\$29.17	\$145.85		

119	5	6 - #10/case	Pudding - Banana - RTE	\$30.81	\$154.05	\$34.45	\$172.26	\$26.26	\$131.30		
120	5	6 - #10/case	Pudding - Chocolate - RTE	\$31.51	\$157.55	\$34.46	\$172.31	\$26.29	\$131.45		
121	5	6 - #10/case	Pudding - Lemon - RTE	\$22.89	\$114.45	N/A	N/A	\$27.72	\$138.60		
122	5	6 - #10/case	Pudding - Tapioca - RTE	\$32.87	\$164.35	\$35.55	\$177.75	\$30.17	\$150.85		
123	10	6 - #10/case	Pudding - Vanilla - RTE	\$30.60	\$306.00	\$34.45	\$344.50	\$26.35	\$263.50		
124	5	12 - 24 oz/case	Gelatin - Citrus	\$27.16	\$135.80	\$30.05	\$150.27	\$25.83	\$129.15		
125	5	12 - 24 oz/case	Gelatin - Reds	\$27.16	\$135.80	\$29.54	\$147.69	\$25.83	\$129.15		
126	10	20 #/case	Pasta - Egg-Noodles - medium	\$13.96	\$139.60	\$13.76	\$137.63	\$10.66	\$106.60		
127	10	20 #/case	Pasta - Elbow-Macaroni	\$14.50	\$145.00	\$14.97	\$149.68	\$13.01	\$130.10		
128	10	20 #/case	Pasta - Lasagna-Noodles	\$16.39	\$163.90	\$15.16	\$151.61	\$11.54	\$115.40		
129	10	20 #/case	Pasta - Spaghetti	\$13.72	\$137.20	\$19.18	\$191.83	\$11.34	\$113.40		
130	10	20 #/case	Pasta - Tri-Colored - Noodle	\$21.94	\$219.40	\$24.18	\$241.83	\$9.19	\$91.90		
131	5	96 ct/case	Cereal - Cherrios-Honey-Wheat	\$39.86	\$199.30	\$37.49	\$187.47	\$36.24	\$181.20		
132	5	96 ct/case	Cereal - Cornflakes	\$39.86	\$199.30	\$25.83	\$129.14	\$36.12	\$180.60		
133	5	96 ct/case	Cereal - Corn-Pops	\$39.86	\$199.30	N/A	N/A	No Bid	No Bid		
134	5	96 ct/case	Cereal - Golden-Grahams	\$26.39	\$131.95	N/A	N/A	\$36.24	\$181.20		
135	5	96 ct/case	Cereal - Kix	\$37.84	\$189.20	N/A	N/A	No Bid	No Bid		
136	5	96 ct/case	Cereal - Raisin-Bran	\$26.39	\$131.95	\$39.32	\$196.61	\$36.12	\$180.60		
137	5	48ct/case	Cereal - Instant - Cream-of-Wheat	\$53.39	\$266.95	\$42.32	\$211.61	\$41.87	\$209.35		
138	5	48 ct/case	Cereal - Instant-Oatmeal - Packets	\$9.96	\$49.80	\$9.56	\$47.80	\$9.39	\$46.95		

139	2	24 #/case	Cereal - Oatmeal - Quick - Cook	\$37.43	\$74.86	\$26.94	\$53.87	\$28.68	\$57.36		
140	10	25 #	Crumbs - Panko - Bread	\$18.15	\$181.50	\$17.47	\$174.73	\$18.99	\$189.90		
141	15	12-1 # bxs	Crumbs - Corn - Flake	\$36.81	\$552.15	N/A	N/A	\$34.21	\$513.15		
142	10	5 oz	Spice - Chives - Freeze - Dried	\$5.35	\$53.50	\$7.23	\$72.28	\$33.18	\$331.80		
143	1	16 oz ea.	Spice - Extract - Almond	\$20.44	\$20.44	\$4.51	\$4.51	\$18.02	\$18.02		
144	1	16 oz ea.	Spice - Extract - Lemon	\$21.09	\$21.09	N/A	N/A	\$52.98	\$52.98		
145	1	16 oz ea.	Spice - Extract - Vanilla	\$4.83	\$4.83	\$3.61	\$3.61	\$247.35	\$247.35		
146	5	3 # cont	Spice - Flakes - Onion	\$6.93	\$34.65	\$12.47	\$62.34	\$85.26	\$426.30		
147	1	16 oz ea.	Spice - Flakes - Parsley	\$13.58	\$13.58	\$6.89	\$6.89	\$33.52	\$33.52		
148	5	3 # cont	Spice - Granulated - Garlic	\$27.63	\$138.15	\$26.55	\$132.77	\$128.80	\$644.00		
149	1	16 oz ea.	Spice - Ground - Cinnamon	\$7.60	\$7.60	\$5.17	\$5.17	\$52.02	\$52.02		
150	1	16 oz ea.	Spice - Ground - Cloves	\$20.57	\$20.57	\$18.87	\$18.87	\$110.82	\$110.82		
151	1	16 oz ea.	Spice - Ground - Cumin	\$10.84	\$10.84	\$4.12	\$4.12	\$45.18	\$45.18		
152	1	16 oz ea.	Spice - Ground - Pepper - Lemon	\$11.79	\$11.79	\$10.65	\$10.65	\$62.56	\$62.56		
153	1	16 oz ea.	Spice - Powder - Chile	\$8.46	\$8.46	\$9.91	\$9.91	\$19.52	\$19.52		
154	1	16 oz ea.	Spice - Powder - Curry	\$11.62	\$11.62	\$11.67	\$11.67	\$57.50	\$57.50		
155	10	16 oz ea.	Spice - Powder - Onion	\$6.90	\$69.00	\$4.29	\$42.93	\$37.80	\$378.00		
156	1	25 #	Spice - Salt - Plain	\$7.27	\$7.27	\$5.21	\$5.21	\$5.15	\$5.15		
157	1	4 - 1 gal/case	Spice - Sauce - BBQ (like cattlemens)	\$32.18	\$32.18	\$45.05	\$45.05	\$35.82	\$35.82		
158	6	6 - #10/case	Spice - Sauce - Cheese - Nacho	\$35.10	\$210.60	\$43.67	\$262.00	\$33.59	\$201.54		

159	6	6 - #10/case	Spice - Sauce - Alfredo Cheese	No Bid	No Bid	\$68.48	\$410.90	\$66.06	\$396.36		
160	1	4 - 1 gal/case	Spice - Sauce - Soy	\$36.03	\$36.03	\$18.74	\$18.74	\$30.89	\$30.89		
161	1	8 - .5 gal/case	Spice - Sauce - Sweet - and - Sour	\$33.85	\$33.85	\$16.16	\$16.16	\$30.97	\$30.97		
162	1	4 - 1 gal/case	Spice - Sauce - Teriyaki	\$43.95	\$43.95	\$43.14	\$43.14	\$41.62	\$41.62		
163	1	4 - 1 gal/case	Spice - Sauce - Worcestershire	\$30.32	\$30.32	\$16.65	\$16.65	\$23.64	\$23.64		
164	5	16 oz	Spice - Seasoning - Big & Bold Mont.	\$11.13	\$55.65	\$17.66	\$88.32	\$42.32	\$211.60		
165	15	26 oz	Spice - Seasoning - Smokey - Mesquite	\$15.45	\$231.75	N/A	N/A	\$39.26	\$588.90		
166	5	16 oz	Spice - Seasoning - Italian Blend	\$7.93	\$39.65	\$8.23	\$41.14	\$6.30	\$31.50		
167	1	16 oz	Spice - Seasoning - Mrs. Dash	No Bid	No Bid	\$15.64	\$15.64	\$45.56	\$45.56		
168	5	16 oz	Spice - Seasoning - Old Bay	\$6.29	\$31.45	\$6.10	\$30.49	\$49.31	\$246.55		
169	5	16 oz	Spice - Seasoning - Poultry	\$9.80	\$49.00	\$35.11	\$175.54	\$44.85	\$224.25		
170	15	16 oz	Spice - Seasoning - Taco	\$7.73	\$115.95	\$8.84	\$132.55	\$51.87	\$778.05		
171	2	48 ct/case	Disposable - Shaker - Salt	\$16.35	\$32.70	\$14.67	\$29.35	\$13.81	\$27.62		
172	2	48 ct/case	Disposable - Shaker - Black - Pepper	\$59.78	\$119.56	\$41.04	\$82.09	\$41.18	\$82.36		
173	9	12 - 2.5 #/case	Frozen-Veg-Asparagus - Cuts and Tips	\$42.48	\$382.32	\$35.32	\$317.90	\$66.67	\$600.03		
174	10	12 - 2.5 #/case	Frozen-Veg-Broccoli-Cuts	\$27.86	\$278.60	\$32.35	\$323.55	\$23.20	\$232.00		
175	15	12 - 2.5 #/case	Frozen-Veg-Broccoli-Normandy	\$29.31	\$439.65	\$36.78	\$551.77	\$32.24	\$483.60		
176	15	12 - 2.5 #/case	Frozen-Veg-Brussel-Sprouts	\$26.31	\$394.65	N/A	N/A	\$28.21	\$423.15		
177	15	12 - 2.5 #/case	Frozen-Veg-Capri-Mix	\$27.71	\$415.65	\$21.38	\$320.65	\$22.23	\$333.45		
178	15	12 - 2 #/case	Frozen-Veg-Carrots-Baby	\$22.57	\$338.55	\$21.71	\$325.65	\$21.33	\$319.95		

179	15	12 - 2 #/case	Frozen-Veg-Carrots-Sliced	\$16.89	\$253.35	\$23.78	\$356.77	\$16.10	\$241.50		
180	15	12 - 2 #/case	Frozen-Veg-Cauliflower	\$27.12	\$406.80	\$26.41	\$396.13	\$22.44	\$336.60		
181	15	12 - 2 #/case	Frozen-Veg-Collard-Greens	No Bid	No Bid	N/A	N/A	\$32.45	\$486.75		
182	15	12 - 2.5 #/case	Frozen-Veg-Corn-Chuckwagon	\$28.65	\$429.75	\$26.41	\$396.13	\$23.36	\$350.40		
183	15	96 - 3"/case	Frozen-Veg-Corn-on-Cob	\$19.78	\$296.70	\$25.60	\$384.03	\$18.90	\$283.50		
184	15	12 - 2.5 #/case	Frozen-Veg-Corn-Whole-Kernal	\$24.24	\$363.60	\$24.84	\$372.58	\$21.95	\$329.25		
185	15	12 - 2 #/case	Frozen-Veg-Green-Beans-Cut	\$25.12	\$376.80	\$22.58	\$338.71	\$18.96	\$284.40		
186	15	5 - 5 #/case	Frozen-Veg-Green-Chile-Chopped-Mild	\$25.28	\$379.20	\$23.66	\$354.84	\$21.95	\$329.25		
187	15	12 - 2.5 #/case	Frozen-Veg-Green-Peas	\$28.85	\$432.75	\$28.40	\$425.97	\$24.38	\$365.70		
188	15	12 - 2.5 #/case	Frozen-Veg-Fajita-Mix	\$32.16	\$482.40	\$16.34	\$245.16	\$35.97	\$539.55		
189	15	12 - 2.5 #/case	Frozen-Veg-Italian-Mix	\$29.60	\$444.00	\$28.65	\$429.68	\$24.57	\$368.55		
190	5	12 - 2.5 #/case	Frozen-Veg-Stir-Fry-Mix	\$32.42	\$162.10	\$27.87	\$139.35	\$25.90	\$129.50		
191	15	12 - 2.5 #/case	Frozen-Veg-Mixed-Vegetables	\$25.54	\$383.10	\$28.72	\$430.81	\$23.43	\$351.45		
192	15	12 - 2.5 #/case	Frozen-Veg-Fried-Okra	\$19.19	\$287.85	\$16.91	\$253.71	\$38.36	\$575.40		
193	6	12 - 2.5 #/case	Frozen - Veg-Breaded-Onion Rings	\$47.03	\$282.18	\$60.72	\$364.32	\$63.80	\$382.80		
194	15	12 - 2.5 #/case	Frozen-Veg-Oriental-Mix	\$30.82	\$462.30	\$27.87	\$418.06	\$19.62	\$294.30		
195	15	12 - 2.5 #/case	Frozen-Veg-Peas and Carrots	\$25.66	\$384.90	\$17.51	\$262.58	\$22.82	\$342.30		
196	15	6 - 5 #/case	Frozen-Veg-Potato-French-Fries	\$22.91	\$343.65	\$20.75	\$311.29	\$17.96	\$269.40		
197	15	6 - 5 #/case	Frozen-Veg-Potato-Tater-Tots	\$28.86	\$432.90	\$35.85	\$537.74	\$27.68	\$415.20		
198	15	5 - 5 #/case	Frozen-Veg-Potato-Sweet-Potato-Fries	\$27.00	\$405.00	\$28.34	\$425.16	\$21.21	\$318.15		

199	15	6 - .5 gal/c	Frozen-Veg-Red-Chile-Sauce- Mild	\$19.32	\$289.80	\$23.46	\$351.94	\$19.43	\$291.45		
200	15	12 - 2.5 #/case	Frozen-Veg-Scandinavian-Mix	\$42.04	\$630.60	N/A	N/A	\$23.30	\$349.50		
201	15	12 - 3 #/case	Frozen-Veg-Spinach-Chopped	\$35.41	\$531.15	\$32.87	\$493.06	\$30.13	\$451.95		
202	15	12 - 2.5 #/case	Frozen-Veg-Squash-Yellow	\$38.62	\$579.30	\$27.18	\$407.74	\$33.19	\$497.85		
203	15	12 - 2.5 #/case	Frozen-Veg-Squash-Zucchini	\$38.00	\$570.00	\$25.68	\$385.16	\$32.49	\$487.35		
204	15	2 - 5 #/case	Frozen-Bread-Hush-Puppies	\$17.80	\$267.00	\$15.51	\$232.58	\$16.75	\$251.25		
205	20	98 ct/case	Biscuits - 2 oz.	\$30.51	\$610.20	\$27.53	\$550.54	\$25.27	\$505.40		
206	5	120 ct/case	Frozen-Cookies-Chocolate-Chip	\$23.59	\$117.95	\$41.63	\$208.17	\$46.70	\$233.50		
207	5	120 ct/case	Frozen-Cookies-Oatmeal-Raisin	\$22.89	\$114.45	\$45.11	\$225.54	\$46.70	\$233.50		
208	5	120 ct/case	Frozen-Cookie-Peanut-Butter	\$37.00	\$185.00	\$65.11	\$325.54	\$64.56	\$322.80		
209	5	120 ct/case	Frozen-Cookies-Sugar	\$36.52	\$182.60	\$38.87	\$194.35	\$64.56	\$322.80		
210	5	6 - 6.5 #/case	Frozen-Fruit-Strawberries-Sliced	\$65.17	\$325.85	\$60.27	\$301.34	\$46.98	\$234.90		
211	5	20# / case	Frozen-Fruit-Strawberries-Whole	\$52.37	\$261.85	\$17.45	\$87.26	\$37.79	\$188.95		
212	15	8 - 4 #	Frozen-Sauce -Alfredo	\$68.54	\$1,028.10	N/A	N/A	\$66.06	\$990.90		
213	15	6 ct/case	PreBaked - Pie - Pumkin	\$36.60	\$549.00	\$35.11	\$526.61	\$26.19	\$392.85		
214	10	12 - 16 oz/cs	Topping - On Top - Vanilla - like Rich's	\$36.19	\$361.90	\$42.88	\$428.82	\$45.46	\$454.60		
215	15	5 doz. Large/cas	Eggs - Large - Raw	\$46.39	\$695.85	\$34.60	\$519.03	\$36.80	\$552.00		
216	5	12/12 ct patties	Eggs - Patties - 4" round	\$27.89	\$139.45	\$50.40	\$251.99	\$33.01	\$165.05		
217	20	144 ct	Eggs-Boiled-in Brine	\$17.78	\$355.60	\$29.05	\$581.08	\$32.37	\$647.40		
218	6	4 - bags/case	Eggs-Boil-in-Bag-Liquid-Egg	\$45.59	\$273.54	N/A	N/A	\$28.50	\$171.00		

219	48	40 - 4 oz/case	Beef-Raw-Breaded-Chicken-Fried-Steak	\$34.89	\$1,674.72	\$31.26	\$1,500.63	\$21.11	\$1,013.28		
220	8	#	Beef-Cooked-all beef-Meatballs - 2 oz	\$40.44	\$323.52	\$32.95	\$263.58	\$25.12	\$200.96		
221	36	40 - 4 oz/case	Beef-Cooked-Salisbury-Steak- NOT in gravy	\$35.84	\$1,290.24	\$37.05	\$1,333.89	\$67.32	\$2,423.52		
222	12	80 #/case	Beef- Lean -Ground- 85%	\$2.22	\$26.64	\$2.22	\$26.65	\$1.98	\$23.76		
223	2	40 - 4 oz/case	Beef- Lean -Liver-Sliced- 4 oz. slices	\$24.30	\$48.60	\$19.94	\$39.87	\$32.22	\$64.44		
224	15	40 #/case	Beef- Lean -Stew-Meat- 3/4" cut	\$43.65	\$654.75	\$43.16	\$647.37	\$46.00	\$690.00		
225	1800	#	Beef- Lean -Boneless-Inside Round	\$3.04	\$5,472.00	\$4.15	\$7,465.26	\$3.01	\$5,418.00		
226	15	#	Corned Beef	\$3.52	\$52.80	\$2.94	\$44.05	\$3.67	\$55.05		
227	2	40 - 4 oz/case	Beef- Lean -Hamburger-Patties- all-beef-4-1	\$33.69	\$67.38	\$29.97	\$59.94	\$46.84	\$93.68		
228	40	4 - 1 #/case	Beef-Franks-4-1	\$26.81	\$1,072.40	\$26.53	\$1,061.05	\$18.94	\$757.60		
229	16	10 #/case	Beef - raw - strips - for fajita - seasoned	\$101.63	\$1,626.08	\$53.11	\$849.68	\$94.21	\$1,507.36		
230	1200	24 ct - cs	Chicken- Boneless -Chicken-Breast- 4 oz. portion	\$43.48	\$52,176.00	\$28.74	\$34,484.21	\$26.16	\$31,392.00		
231	60	10 #/case	Chicken-Cooked-Diced	\$35.46	\$2,127.60	\$30.00	\$1,800.00	\$25.53	\$1,531.80		
232	150	96 ct	Chicken - IQF - Legs avg 4.5 oz	\$27.52	\$4,128.00	\$55.25	\$8,287.89	\$32.87	\$4,930.50		
233	150	96 ct	Chicken - IQF - Thighs avg 8 oz	\$55.76	\$8,364.00	\$50.29	\$7,544.21	\$19.36	\$2,904.00		
234	18	10 #/case	Chicken - raw-pulled-white/dark	\$39.72	\$714.96	\$27.58	\$496.42	\$33.51	\$603.18		
235	2	50 - 3 oz/case	Chicken-Raw-Breaded-Tenders/Strips	\$2.68	\$5.36	\$23.47	\$46.95	\$80.43	\$160.86		
236	16	10 #/case	Chicken - strips - raw-for fajita - seasoned	\$64.16	\$1,026.56	\$35.05	\$560.84	\$43.15	\$690.40		
237	6	6 - 66.5 oz/case	Fish-Canned-Salmon	\$82.63	\$495.78	N/A	N/A	No Bid	No Bid		
238	6	6 - 66.5 oz/case	Fish-Canned-Tuna	\$58.53	\$351.18	\$64.13	\$384.78	\$80.69	\$484.14		

239	30	10 #/case	Fish-Catfish-Nuggets-Breaded	\$22.98	\$689.40	N/A	N/A	\$30.49	\$914.70		
240	30	10 #/case	Fish-Cod-Unbreaded-4 oz. Portions	\$50.74	\$1,522.20	\$42.21	\$1,266.32	\$40.49	\$1,214.70		
241	15	10 #/case	Fish-Shrimp-Breaded-NOT-popcorn	\$43.84	\$657.60	\$43.53	\$652.89	\$42.22	\$633.30		
242	10	10 #/case	Fish-Sticks	\$25.87	\$258.70	\$25.58	\$255.79	\$26.28	\$262.80		
243	16	10 #/case	Fish-Talapia-Unbreaded-IQF- 4 oz portions	\$24.81	\$396.96	\$26.84	\$429.47	\$25.22	\$403.52		
244	3	40 - 4 oz/case	Pork-Chops-Lean-bone-in-4oz.portions	\$39.22	\$117.66	\$35.68	\$107.05	\$26.00	\$78.00		
245	6	8 - 10 #/case	Pork-Boneless-Pork-Loin-Roast-NOT Tied	\$1.57	\$9.42	\$1.78	\$10.67	\$1.47	\$8.82		
246	24	10 #/case	Pork-Lean-Stew-Meat-3/4" cut	\$4.21	\$101.04	\$22.53	\$540.63	\$19.73	\$473.52		
247	75	#	Pork-LowSodium-Bacon	\$43.87	\$3,290.25	N/A	N/A	\$75.61	\$5,670.75		
248	150	#	Pork-LowSodium-Buffer Ham	\$2.04	\$306.00	N/A	N/A	\$3.23	\$484.50		
249	10	50-3 oz.	Pork-Raw-Sausage-Patties-like Jimmy Dean	\$18.10	\$181.00	\$26.40	\$263.98	\$13.31	\$133.10		
250	5	10#	Pork-Cooked-Sausage-Patties-2"	\$23.63	\$118.15	\$31.62	\$158.12	\$14.63	\$73.15		
251	10	80-1 oz	Pork-Raw-Sausage-Links-like Jimmy Dean	\$16.33	\$163.30	\$29.94	\$299.35	\$14.69	\$146.90		
252	120	40 - 4 oz	Pork-Boneless-Riblet	\$33.12	\$3,974.40	\$46.73	\$5,607.74	\$43.74	\$5,248.80		
253	240	#	Turkey-Breast-Cooked	\$54.65	\$13,116.00	\$3.10	\$743.23	\$2.57	\$616.80		
254	30	10 #/case	Turkey-Ground	\$20.38	\$611.40	N/A	N/A	\$14.45	\$433.50		
255	600	#	Turkey-Roast-Raw-in foil/bag	\$3.22	\$1,932.00	N/A	N/A	\$3.20	\$1,920.00		
256	6	#	Cheese-American - sliced	\$50.11	\$300.66	\$42.15	\$252.90	\$43.86	\$263.16		
257	15	40 #/case	Cheese - Cheddar - Shredded	\$47.55	\$713.25	\$40.40	\$605.97	\$39.72	\$595.80		
258	7	6 #/case	Cheese - Mozzarella - Skim Milk - Shredded	\$46.67	\$326.69	\$40.37	\$282.56	\$60.66	\$424.62		

259	6	6 #/case	Cheese - Swiss	\$3.72	\$22.32	N/A	N/A	\$2.61	\$15.66		
260	2	10 #/case	Cheese - Parmesan - Grated	\$43.18	\$86.36	N/A	N/A	\$35.27	\$70.54		
261	25,000	1/2 Pint	1%LowFat -Pasteurized-Homo-Milk	\$16.42	\$410,500.00	N/A	N/A	\$11.40	\$285,000.00	\$0.26	\$6,500.00
262	12,000	1/2 Pint	Fat-Free-Skim-Milk	\$16.42	\$197,040.00	N/A	N/A	\$9.64	\$115,680.00	\$0.26	\$3,120.00
263	200	1/2 gal	2%LowFat -Pasteurized-Homo-Milk	\$4.73	\$946.00	N/A	N/A	No Bid	No Bid	\$1.90	\$380.00
264	72	1/2 gal	Buttermilk	\$4.55	\$327.60	\$18.10	\$1,302.97	\$14.15	\$1,018.80	\$1.90	\$136.80
265	50	5 # Tub	Sour Cream	\$22.39	\$1,119.50	\$13.43	\$671.51	\$21.38	\$1,069.00	\$5.20	\$260.00
266	25	100 ct	SourCream - 1 oz. Portions	\$18.01	\$450.25	N/A	N/A	\$9.47	\$236.75	No Bid	No Bid
267	50	5 # Tub	LowFat - Cottage - Cheese	\$58.28	\$2,914.00	\$16.68	\$833.87	\$12.36	\$618.00	\$5.96	\$298.00
268	500	4 oz.	LowFat - Yogurt - all flavors	\$19.42	\$9,710.00	\$13.96	\$6,978.49	\$12.00	\$6,000.00	\$3.50	\$1,750.00
269	50	5 # Tub	LowFat - Yogurt - all Flavors	\$16.11	\$805.50	N/A	N/A	No Bid	No Bid	No Bid	No Bid
270	144	Dozen	Ice-Cream-Cups- 4 oz. Portions-C-S-V	\$8.96	\$1,290.24	N/A	N/A	\$19.99	\$2,878.56	\$7.20	\$1,036.80
271	144	Dozen	Sherbet-Cup- 4 oz. Portions	\$7.72	\$1,111.68	N/A	N/A	\$10.81	\$1,556.64	\$7.20	\$1,036.80
272	1	2 - 100/case	Styro - Tray - 3/comp with lid	\$19.78	\$19.78	\$18.93	\$18.93	\$11.23	\$11.23		
273	3	4/200/case	Styro - 6/comp - tray	\$14.88	\$44.64	N/A	N/A	\$42.33	\$126.99		
274	2	4 - 125/case	Styro - Plate - 9"	\$21.19	\$42.38	\$18.89	\$37.78	\$37.60	\$75.20		
275	2	8 - 125/case	Styro - Plate - 6"	\$41.03	\$82.06	\$18.98	\$37.96	\$37.53	\$75.06		
276	4	8 - 125/case	Styro - Bowl - 10 -12oz.	\$28.84	\$115.36	\$54.99	\$219.96	\$31.39	\$125.56		
277	4	40 - 25/case	Styro - Cup - 10 oz.	\$22.65	\$90.60	\$26.51	\$106.04	\$25.95	\$103.80		
278	4	40 - 25/case	Styro - Cup - 8 oz.	\$19.36	\$77.44	\$20.82	\$83.26	\$20.37	\$81.48		

279	50	20 - 25/case	Styro - Food-Container - 8 oz.	\$43.22	\$2,161.00	\$31.92	\$1,596.20	\$37.45	\$1,872.50		
280	50	5 - 100/case	Food Cont.-Lid (compatible)	\$24.61	\$1,230.50	\$16.74	\$836.96	\$21.73	\$1,086.50		
281	50	20 - 125/case	Plastic-Food-Container - 4 oz.	\$59.16	\$2,958.00	\$31.41	\$1,570.65	\$40.99	\$2,049.50		
282	50	20 - 125/case	Food Cont.-Lid (compatible)	\$46.24	\$2,312.00	\$26.45	\$1,322.28	\$21.73	\$1,086.50		
283	4	20-125/case	Plastic-Food-Container - 2 oz.	\$31.62	\$126.48	\$37.64	\$150.57	\$24.11	\$96.44		
284	4	20-125/case	Food Cont.-Lid (compatible)	\$30.48	\$121.92	\$36.25	\$145.00	\$21.73	\$86.92		
285	6	50 ct/case	Plastic - Embossed - Apron	\$13.56	\$81.36	\$9.14	\$54.85	\$45.86	\$275.16		
286	2	18 X 3 M/case	Plastic - 18" - Food Wrap	\$22.87	\$45.74	\$20.80	\$41.61	\$13.45	\$26.90		
287	4	12 X 3 M/case	Plastic - 12" - Food Wrap	\$11.17	\$44.68	\$16.39	\$65.57	\$9.19	\$36.76		
288	3	250/case	Plastic - Freezer - Bags - 1 gallon	\$16.62	\$49.86	\$21.28	\$63.85	\$12.81	\$38.43		
289	3	3 - 250/case	Plastic - Freezer - Bags - 1 Quart	\$15.85	\$47.55	\$28.61	\$85.83	\$12.91	\$38.73		
290	10	2 M/case	Plastic - Sandwich-Bags- flip-top	\$21.49	\$214.90	\$26.47	\$264.67	\$11.65	\$116.50		
291	4	250/case	KFS - 3 piece cutlery	\$17.33	\$69.32	\$23.86	\$95.43	\$21.54	\$86.16		
292	65	250/case	Foil - Tray - 3/comp with lid	\$67.18	\$4,366.70	\$29.65	\$1,927.39	\$52.02	\$3,381.30		
293	2	18 X 50/case0'	Foil - Heavy-Duty - 18"	\$32.12	\$64.24	\$28.26	\$56.52	\$26.08	\$52.16		
294	6	20 pk/case	Napkin-Dispenser- full fold-6½Lx4½Wx5½H	\$50.61	\$303.66	\$51.30	\$307.83	\$30.81	\$184.86		
295	8	500/case	Paper Sacks - # 6	\$11.22	\$89.76	\$10.66	\$85.30	\$7.70	\$61.60		
296	3	1 M/case	Paper Liners (sheet pans)	\$34.88	\$104.64	\$37.66	\$112.99	\$32.77	\$98.31		
297	2	30 - 250/case	Straws - unwrapped	\$45.30	\$90.60	\$12.66	\$25.33	\$25.51	\$51.02		
298	5	144/case	Hair Nets - light brown	\$14.74	\$73.70	\$14.67	\$73.37	\$92.51	\$462.55		

299	1	10 - 100/case	Latex Free-Vinyl-gloves- extra-large-NO powder	\$28.51	\$28.51	\$25.54	\$25.54	\$15.06	\$15.06		
300	20	10 - 100/case	Latex Free-Vinyl-Gloves- large-NO powder	\$28.31	\$566.20	\$25.54	\$510.87	\$15.03	\$300.60		
301	20	10 - 100/case	Latex Free-Vinyl-Gloves- medium-NO powder	\$28.17	\$563.40	\$25.54	\$510.87	\$14.99	\$299.80		
302	2	10 - 100/case	Latex Free-Vinyl-Gloves- small-NO powder	\$27.91	\$55.82	\$25.54	\$51.09	\$28.52	\$57.04		
303	5	20 - 25/case	Clear (HD 1.5 mil) 33 gal. Liner	\$20.52	\$102.60	\$22.97	\$114.84	\$16.45	\$82.25		
304	8	6 - 1 ga/casel	Bleach	\$12.38	\$99.04	\$11.88	\$95.04	\$8.84	\$70.72		
305	5	6 - 1 ga/casel	Pine Cleaner	\$26.54	\$132.70	N/A	N/A	\$26.91	\$134.55		
306	15	4 - 1 gal	Grease Cutter Plus	\$119.37	\$1,790.55	\$24.37	\$365.55	\$19.45	\$291.75		
307	5	15 pk/case	Nylon Soap Pads - SOS or equal	\$34.31	\$171.55	N/A	N/A	\$33.54	\$167.70		
308	5	15 pk/case	Scour Pads - Green	\$5.31	\$26.55	\$6.43	\$32.17	\$4.91	\$24.55		
309	5	12 ct/case	Steel Scrubbers	\$30.31	\$151.55	\$6.85	\$34.24	\$36.39	\$181.95		
310	3	12 ct/case	Mop Heads	\$40.84	\$122.52	\$13.96	\$41.87	\$12.51	\$37.53		
311	6	pair	Oven Mitts	\$9.22	\$55.32	\$6.59	\$39.52	\$11.07	\$66.42		
312	1	12 pk/case	Rubber Gloves - 18"	\$12.40	\$12.40	N/A	N/A	\$77.27	\$77.27		
313	2	200 ct/case	Food Service Towel - Disposable	\$77.13	\$154.26	N/A	N/A	\$20.45	\$40.90		
314	6	5 gallon pails	Dishwashing Machine - Detergent - Low Temp	\$75.57	\$453.42	\$87.83	\$526.96	\$155.95	\$935.70		
315	6	5 gallon pails	Dishwashing Machine - Rinse-Aid - Low Temp	\$103.04	\$618.24	\$113.07	\$678.39	\$273.18	\$1,639.08		
316	6	5 gallon pails	Dishwashing Machine - Sanitizer - Low Temp	\$30.20	\$181.20	\$53.58	\$321.46	\$71.48	\$428.88		

Size or units not
given for
comparison

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/17/2018

Report No: 5.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, Resolution 2018-15 approving the Housing Authority Smoke Free Policy. (*Evelyn Huff, Housing Authority Manager*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the resolution

Background: On November 16, 2016, the Department of Housing and Urban Development (HUD) issued Final Rule FR-5597-F-03 requiring that all public housing authorities must design and implement a policy barring the use of prohibited tobacco products in all public housing living units, interior common areas and outdoor areas within 25 feet from public housing and administrative office buildings. Prohibited tobacco products are defined as items that involve ignition and burning of tobacco leaves, such as cigarettes, cigars, pipes and water pipes or hookahs. Electronic cigarettes, or "e-cigs" are not included in the ban.

PIH Notice 2017-03 requires that all Housing Authorities design and implement this policy by July 31, 2018. This notice also allows the Housing Authorities to designate an entire property as a smoke free property. Due to the provision of requiring 25 feet from any building, the Housing Authority staff and the Advisory Board are recommending that Alta Vista and Plaza Hacienda will become smoke free properties in their entirety.

The Housing Authority's previous no-smoking policy stipulated that any tenant moving in after July 1, 2012 was not allowed to smoke in their unit. The Housing Authority has distributed surveys, informational handouts and has held public meetings in preparation for this new policy implementation.

RESOLUTION NO. 2018-16

**A RESOLUTION REQUESTING APPROVAL OF THE HOUSING AUTHORITY SMOKE FREE
POLICY**

WHEREAS; the Department of Housing and Urban Development issued Final Rule FR-5597-F-03 on November 16, 2016 requiring that all Housing Authorities must design and implement a policy barring the use of prohibited tobacco products in all public housing living units, interior common areas and outdoor areas within 25 feet from public housing and administrative office buildings;

WHEREAS; the final rule and PIH Notice 2017-03 require the Housing Authority to design and implement this policy prior to July 31, 2018;

WHEREAS; prohibited tobacco products are defined as items that involve the ignition and burning of tobacco leaves, such as: cigarettes, cigars, pipes and water pipes or hookahs;

WHEREAS; PIH Notice 2017-03 gives the Housing Authority the flexibility to make all parts of the Alta Vista and Plaza Hacienda campuses smoke-free;

WHEREAS; the Housing Authority Advisory Board has recommended the approval of the Smoke Free Policy;

BE IT THEREFORE RESOLVED by the City Commission of the City of Alamogordo, New Mexico; that the Housing Authority Smoke Free Policy is approved

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Alamogordo this 24th day of April, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico Municipal Corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

The Housing Authority of the City of Alamogordo

LEASE ADDENDUM

SMOKE FREE POLICY

THIS AGREEMENT is executed between the Housing Authority of the City of Alamogordo (herein called "HA"), and _____; (herein called the "Tenant"), and becomes effective as of this date: _____. [24 CFR 966.4 (a)]

(1) Purpose of Smoke-Free Policy: The HA desires to mitigate (i) the irritation and known adverse health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and turn over costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of property insurance for a non-smoke-free building.

(2) Definition: "SMOKING" means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, pipe, hookahs, water tobacco pipe or other tobacco product or similar lighted product in any manner or in any form. "SMOKING" can be applied to any natural or synthetic tobacco or plant product intended for burning and inhalation.

(3) Smoke-Free Complex: Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of the Tenant's household including guests have been designated as a smoke-free living environment. Tenant and members of Tenant's household and any guests will not smoke anywhere in or on:

- i. Unit rented by the tenant, including any associated porches and yards
- ii. Common areas of the property including but not limited to, lobbies, hallways, stairwells, laundry rooms, community rooms, community bathrooms, or offices
- iii. Grounds of the property, including but not limited to entryways, playgrounds, sidewalks, yards, alleys and any other grounds

Smoking will not be allowed on any Housing Authority property including the unit, any commons buildings or anywhere on the grounds _____ Initial _____ Initial _____ Initial

(4) Tenant Promotion of the Smoke-Free Policy: Tenant will inform Tenant's guests of the smoke-free policy. Tenant will also promptly give the HA a written statement of any incident where the Tenant observes smoking not allowed by this policy or believes smoke is migrating into the Tenant's unit from sources outside of the Tenant's unit.

(5) Housing Authority Disclaimer: Tenant acknowledges that the HA's adoption of a smoke-free living environment, and the efforts to designate the premises as smoke-free, do not make the HA the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and common areas. However, HA shall take reasonable steps to enforce the smoke-free terms of the LEASE ADDENDUM and to make the complex smoke-free. Tenant acknowledges that the HA's adoption of the smoke free living environment, and efforts to designate all or portions of the HA as smoke free, does not in any way change the standard of care that the HA has under applicable law to render the Property any safer, more habitable or improved in terms of air quality standards than any other rental premises. HA cannot and does not warranty or promise that the properties will be free from secondhand smoke. Tenant acknowledges that the HA's ability to police, monitor and enforce the smoke-free terms of the LEASE ADDENDUM is dependent in significant part on the voluntary compliance by the Tenant and the Tenant's guests. Tenant's with respiratory ailments, allergies or other conditions relating to smoke are put on notice that the HA does not assume any higher duty of care to enforce this Addendum than any other HA obligation under the LEASE AGREEMENT.

(6) Enforcement: The HA will post no-smoking signs at entrances and exits, common areas and in conspicuous places adjoining the grounds of the property. The HA staff will monitor the properties for violations. Tenant's unit will be evaluated for visible and odor smoke damage during the yearly housekeeping inspection process or during

Initial _____

the routine work order process. The HA will evaluate if the tenant has violated the smoke-free policy based on the visible and odor condition of the unit. Items to be evaluated include interior paint, appliances, bathroom fixtures and floors. The HA will also consider any written complaints it receives pertaining to violations, both witnessed and perceived.

Once a violation is substantiated, it will be treated as follows:

- 1st Violation – Written Warning Letter
- 2nd Violation – Written Warning Letter and Meeting to Discuss Options
- 3rd Violation – 7 Day Notice of Non-Compliance and Inspection for Damages
- 4th Violation and Greater – Second 7 Day Notice of Non-Compliance, Eviction Notice and Inspection for Damages

In the case the unit has smoke damage the Tenant will be charged:

- 1. \$400 – Full paint of the Unit
- 2. Up to \$200 – Cleaning of Appliances
- 3. Up to \$200 – Cleaning of Bathroom Fixtures
- 4. Up to \$100 – Cleaning of Floors

Tenant's security deposit will not be applied to the cost of cleaning unless inspection of the unit occurs when the Tenant is vacating.

(7) Smoke-Free Area: The SMOKE FREE POLICY pertains to all HA property. This policy does not apply to a person's automobile.

(8) Effect of Breach: Tenant understands and agrees with the conditions of the SMOKE FREE LEASE ADDENDUM and that failure to adhere to any of the conditions of this ADDENDUM will constitute both a material non-compliance with the LEASE AGREEMENT and a serious violation of the LEASE AGREEMENT. In addition, Tenant will be responsible for all costs to remove smoke odor or residue upon any violation of this ADDENDUM.

(9) Execution: By Tenant's signature below, Tenant, household and guests under the household's control agree to the terms and conditions of the SMOKE FREE LEASE ADDENDUM.

By the signature(s) below I/we also acknowledge that the Provisions of the SMOKE FREE LEASE ADDENDUM of this Lease Agreement have been received and thoroughly explained to me/us.

TENANT _____ DATE _____

SPOUSE _____ DATE _____

CO-HEAD _____ DATE _____

CO-TENANT _____ DATE _____

PHA Representative _____ DATE _____

Initial _____

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/17/2018

Report No: 6.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, Resolution 2018-17 approving the Housing Authority's Admissions and Continued Occupancy Policy. (*Evelyn Huff, Housing Authority Manager*) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the resolution

Background: Per the Department of Housing and Urban Development's regulations, Housing Authorities are required to establish an Admissions and Continued Occupancy Policy (ACOP). This document serves as the main policy and operational document for the Housing Authority.

Due to several changes in the law and other HUD regulations, it became necessary for the Housing Authority to update the ACOP. The Housing Authority secured the services of the Nelrod Group, a leading group of housing specialists, to prepare a new ACOP. The new ACOP also includes a new dwelling lease, a new grievance policy and new housekeeping standards.

The new ACOP has been reviewed by staff and the Housing Advisory Board.

RESOLUTION NO. 2018-17

**A RESOLUTION REQUESTING APPROVAL OF THE HOUSING AUTHORITY ADMISSIONS
AND CONTINUED OCCUPANCY POLICY**

WHEREAS; the Department of Housing and Urban Development require that all Housing Authorities maintain an Admissions and Continued Occupancy Policy (ACOP) at all times;

WHEREAS; the ACOP is the main policy document for the Housing Authority operations;

WHEREAS; the ACOP includes the Dwelling Lease Parts I & II, Grievance Procedures, Termination and Eviction Policy, Transfers and Waiting List Policy and the Housekeeping Standards Policy;

WHEREAS; it is required to update the ACOP and other policies to verify they are in compliance with current laws and regulations;

WHEREAS; the Housing Authority Advisory Board has recommended the approval of the ACOP;

BE IT THEREFORE RESOLVED by the City Commission of the City of Alamogordo, New Mexico; that the Housing Authority Admissions and Continued Occupancy Policy is approved

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Alamogordo this 24th day of April, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico Municipal Corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

Housing Authority of the City of Alamogordo
Alamogordo, New Mexico

Admissions and Continued Occupancy Policy

Adopted by PHA Board of Commissioners

Resolution No.:_____

Date of Adoption:_____

Effective Date of Implementation:_____

Authorized Use by Housing Authority of the City of Alamogordo

Admissions and Continued Occupancy Policy Implementation Schedule

Staff Training Date, if needed: _____

Distribution to Functional Areas

This policy has been distributed to staff in the following departments:

- ☐ **Public Housing Managers**
- ☐ **Admissions/Occupancy Staff**
- ☐ **Financial Staff**
- ☐ **Maintenance Staff**
- ☐ **Other Specify:** _____

Date Policy Prepared: **December 15, 2016**

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Introduction and Statement of Local Objectives

The overall objective of the Housing Authority of the City of Alamogordo hereinafter referred to as (PHA) is to provide housing for low-income families that is decent, safe, sanitary, and in good repair, on a continuing basis. The PHA's residents play an important role in the PHA's ability to accomplish this mission. Selection and approval of housing residents and their continued occupancy of units affects rental income, maintenance of dwelling units, safety and security of residents and PHA employees, and the impressions or perceptions that the PHA makes on the general public.

Consequently, it is essential that an authority have written policies and procedures that provide for adequate screening of applicants and for continued occupancy of dwelling units by residents. This policy is also in compliance with the Rental Housing Improved Integrity Program (RHIP) as set forth by the Department of Housing and Urban Development (HUD).

This document contains the PHA's policies pertaining to the admissions and continued occupancy of public housing residents. It is organized basically in the order of concerns that responsible PHA staff members encounter in selecting and reexamining residents. These policies include requirements in the Housing Act of 1937, as amended, Title VI of the Civil Rights Act of 1964 and other civil rights requirements, HUD regulations, the Annual Contributions Contract, and state and local laws.

PHA staff members in the housing management area are primarily responsible for implementing the policies contained in the following sections of this document.

Local Objectives

In addition to the general statement above, the Admission and Continued Occupancy Policy (hereinafter referred to as the ACOP) is designed to achieve the following objectives:

- To provide improved living conditions for very low income families while maintaining their rent payments at an affordable level;
- To operate a socially and fiscally sound public housing agency that provides drug-free, decent, safe and sanitary housing with a suitable living environment for residents and their families;
- To avoid concentrations of economically and socially deprived families in any one or all of the PHA's public housing developments;
- To lawfully deny the admission of applicants, or the continued occupancy of residents whose habits and practices reasonably may be expected to adversely affect the health, safety, comfort or welfare of other residents, or, the physical environment of the neighborhood, or, create a danger to PHA employees.

CHAPTER 1. Nondiscrimination and Privacy Requirements

In making decisions concerning admissions and occupancy of dwelling units, the PHA must comply with requirements against discrimination contained in Civil Rights legislation enacted in the 1960's and subsequently legislation concerning the disabled, familial status and the aged. The following outlines the PHA's general policy concerning the requirements and specific actions to be taken in the admission and occupancy process.

A. General Policy

1. The Housing Authority of the City of Alamogordo, Alamogordo, New Mexico, will not discriminate against any person or family because of race, color, creed, age, sex, religion, disability, national origin, actual or perceived sexual orientation or gender identity, marital status or familial status in any phase of the occupancy process. The occupancy process includes, but is not limited to, application processing, leasing, transfers, delivery of management and maintenance services, access to common facilities, treatment of residents, and termination of tenancy.
2. The PHA shall not deny admission to an applicant or participant who is or has been a victim of domestic violence, sexual assault or stalking, if the applicant otherwise qualifies for admission or assistance.
3. There will be no intimidation or retaliatory actions by the PHA or its staff against any applicant or resident because of participation in civil rights activities, or for having asserted any civil rights under statute, regulations, or requirements pursuant thereto.
4. The race, color, or national origin of the residents of the dwelling units or of the staff will not be a factor in the assignment of managers and other staffs responsible for the administration of the public housing program.
5. The PHA will abide by the nondiscrimination requirements of 24 CFR 960.203:
 - a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), which prohibits discrimination based on race, color, or national origin in programs receiving Federal financial assistance. (24 CFR part 1)
 - b) The Fair Housing Act of 1988 (42 U.S.C. 3601-3619), also prohibits discrimination in housing practices based on disability in residential real estate related transactions. (24 CFR parts 100, 108, 109, 110)
 - c) Executive Order 11-63 on Equal Opportunity Housing. (24 CFR part 107)
 - d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination based on disability in programs receiving Federal financial assistance. (24 CFR part 8)
 - e) The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), which prohibits discrimination based on age in programs receiving Federal financial assistance (24 CFR part 146)
 - f) Title II of the Americans with Disabilities Act. (42 U.S.C. 12101-12213)
 - g) Executive Order 131666 requiring agencies and grantees to take affirmative steps to communicate with people who need services or information in a language other than English. (Improving Access to Services for Persons with Limited English Proficiency [LEP])

h) Obligation to Affirmatively Further Fair Housing (24 CFR §903.7(o))

B. Specific Actions

1. The PHA will not, on the grounds of race, color, creed, sex, religion, age disability, national origin, actual or perceived sexual orientation or gender identity, marital status or familial status:
 - a) Deny a person or family admission to housing;
 - b) Provide housing which is different than that provided to others, except for elderly and/or disabled where accessibility features may be required;
 - c) Subject a person to segregation or separate treatment;
 - d) Restrict a person's access to any benefit enjoyed by others in connection with housing programs;
 - e) Treat a person differently in determining eligibility or other requirements for admission;
 - f) Deny any person access to the same level of services provided to others;
 - g) Deny a person the opportunity to participate in a planning or advisory group that is an integral part of the housing programs.
2. It will not intimidate, threaten or take any retaliatory action against any applicant or resident because of a person's participation in civil rights activities or assertions of civil rights.
3. It will not deny physically disabled persons an opportunity to apply for housing due to inaccessible application offices. Accessibility to the main office is available.
4. It will not assign employees in a way that would result in discrimination against applicants or residents.
5. It will make sure that all employees of the PHA, especially those who are involved in the admissions process, are familiar with discrimination and nondiscrimination requirements.
6. It will prominently display a fair housing poster at:
 - a) Each office where applications are taken; and
 - b) Each management office, except single-family dwellings.
7. It will maintain information on the race, ethnicity (Hispanic or non-Hispanic), sex and age of the head of the household of all applicants and residents.
8. It will not discriminate in the rental of, or otherwise make unavailable or deny, a dwelling to any renter because of a disability of:
 - a) That renter;
 - b) A person residing in or intending to reside in that dwelling after it is rented, or made available; or
 - c) Any person associated with that person.
9. It will not discriminate against any person in the terms, conditions or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
 - a) That renter; a person residing in or intending to reside in that dwelling after it is rented, or made available; or

- b) Any person associated with that person.
- 10. It will not make inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is rented or made available, or any person associated with that person, has a disability, or make an inquiry as to the nature or severity of a disability of such a person. Furthermore, the PHA will not inquire whether an applicant or resident is "capable of living independently". However, this paragraph does not prohibit the PHA from making the following inquiries, provided that these inquiries are made of all applicants, whether or not they have disabilities.
 - a) Inquiry into an applicant's ability to meet the requirements of tenancy;
 - b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or persons with a particular type of disability;
 - c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with particular type of disability should such priority be a part of the PHA's policy;
 - d) Inquiry to determine whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance, except that such persons who claim eligibility as disabled due to drug or alcohol abuse alone are not eligible for housing; or
 - e) Inquiry to determine whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance, or of any violent crime.
- 11. The PHA will not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others. *Chapter 7. Applicant Screening and Denial of Admission*, of this policy, will describe in detail how such individuals will be identified prior to occupancy.
- 12. The PHA reviews its policies and procedures, at least annually, to assure compliance with all civil rights requirements.

C. Service Policy/Reasonable Accommodations

- 1. The PHA's policies and practices are designed to provide assurances that all persons with disabilities will be provided reasonable accommodations so that they may fully access and utilize the housing programs and related services.
- 2. The PHA will identify and eliminate situations and/or procedures that create barriers to equal housing opportunity for all. In accordance with Section 504, and the Fair Housing Amendments Act of 1988, the PHA will make structural modifications to its housing and non-housing facilities and make reasonable accommodations or combinations of structural modifications and reasonable accommodations, provided that the modifications can be accomplished without undue financial and/or administrative burden. If providing a requested modification results in a fundamental alteration in the nature of the program or an undue financial/administrative burden, the PHA need not provide that accommodation. However, the PHA is required to provide any other accommodation that would not result in undue financial and/or administrative burden or fundamental alteration of the program.
- 3. Requests for reasonable accommodation from persons with disabilities may be presented to an employee of the PHA. The request may be written, verbal or presented in another understandable manner. The employee receiving the request will deliver the request to the occupancy staff person assigned to the applicant/resident or other designated staff who are authorized to process that request and seek verification of the need for the

accommodation. The accommodation will be granted upon receipt of third-party verification that the accommodation meets the need presented by the disability and does not result in substantial alteration of the program or create an undue financial or administrative burden on the PHA. Should the request be denied, an applicant may request an informal meeting to appeal the decision and a resident may request a hearing under the PHA's Grievance Procedures.

4. Reasonable accommodations will be made for persons with a disability who require an advocate, accessible offices, or alternative locations for making application, including their home or a service agency. A designee will be allowed to provide some information, but only with the permission of the person with the disability.
5. All PHA mailings will be made available in an accessible format upon request as a reasonable accommodation.
6. In response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities, (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation.
 - a) A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.
 - b) Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g. a court-issued subpoena requiring disclosure). (Department of Justice and HUD joint statement, May 17, 2004).
7. The PHA will make a reasonable effort to provide accessibility to an individual with a long-term but temporary disability that limits their mobility or other major life activities. In such cases, their lease will specify that they will be required to relocate to another unit when the need for the accessibility features is no longer required. The temporary nature of the disability and the approximate length of time of the disability will be verified through a qualified health or services professional.
8. The PHA will not permit these policies to be subverted to do personal or political favors. The PHA will not offer units in an order different from that prescribed by this policy, since doing so violates the policy, Federal law, and the civil rights of the other families on the waiting list.
9. The PHA will also provide reasonable accommodation in order to ensure equal access to the programs during the admissions phase. These accommodations may include but are not limited to:
 - a) Mail application to the applicant
 - b) Allow advocates to assist during the application and certification process

D. Translation of Documents

In determining whether it is feasible to translate documents into other languages or Braille for the blind, the PHA will consider the following factors:

1. The number of applicants and residents who do not speak English and speak another language, or need Braille for adequate understanding.
2. The cost per client of translating the documents into another language or into Braille.
3. The availability of translation and/or interpreter services in the PHA's jurisdiction.
4. Documents intended for use by applicants and residents will be made available in formats accessible to those with vision or hearing impairments. Equally important, the documents will be simply and clearly written to enable applicants with learning or cognitive disabilities to understand as much as possible. It is also understood that many of the public housing related concepts may need to be explained more than once to applicants/residents. Sign language interpreters may be provided for hearing-impaired applicants/residents if requested as a reasonable accommodation. For applicants/residents the intake/occupancy staff will read and explain orally anything they would normally hand to an applicant/resident to be read or filled out. Staff will assist in completing forms and other required documents for persons unable to write.
5. At a minimum, the PHA will prepare the following information in a clearly written accessible format:
 - a) Marketing and informational material;
 - b) Application process information;
 - c) The application;
 - d) All form letters and notices to the applicant/resident;
 - e) The PHA's general policy regarding reasonable accommodation;
 - f) New resident orientation materials;
 - g) The lease and any applicable house rules;
 - h) Guidance/instructions on care of the housing unit;
 - i) Information on opening, closing and updating the waiting list;
 - j) All information related to applicant/resident rights (informal/formal hearings grievance procedures, etc.).

E. Privacy Policy

1. It is the PHA's policy to guard the privacy of individual applicants and residents in accordance with the Privacy Act of 1974, and to ensure the protection of those individuals' records maintained by the PHA. The PHA does not allow the disclosure of any personal abuse/treatment or criminal background contained in any of their records to any person or agency without express written consent of the affected individual, or as required by law or regulation. However, this privacy policy in no way limits the PHA's right or ability to determine the applicant's suitability for tenancy or evaluate the resident's suitability for continued occupancy.

2. As required by the Violence Against Women Act (VAWA), the PHA shall notify applicants and tenants assisted under public housing of the U.S. Housing Act of 1937 of their rights and the VAWA, including their right to confidentiality and the limits thereof.
3. The PHA shall retain in confidence all information pursuant to Violence Against Women Act including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking.
4. The information shall neither be entered into any shared database nor be provided to any related entity, except:
 - a) To the extent that disclosure is requested or consented to in writing by the individual; or
 - b) Required for use in an eviction proceeding of an abuser, stalker or perpetrator of domestic violence; or
 - c) Is otherwise required by applicable law

F. Code of Conduct

In accordance with the Annual Contributions Contract, Section 19, Conflict of Interest, the PHA has established a written code of conduct for conducting business in accordance with core values and ethical standards. (See also PHA's Conduct Standards Policy.)

1. Neither the PHA, nor any of its contractors or subcontractors, may enter into any contract or arrangement in connection with tenant-based programs in which the following class of persons has any interest, direct or indirect, during tenure or for one year thereafter.
 - a) Any present or former member or officer of the PHA, or any member of the officer's immediate family; exempted is any present or former resident commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policy-making position with the resident corporation.
 - b) Any employee of the PHA, any contractor or subcontractor, any agent of the PHA, who formulates policy or who influences decisions with respect to the PHA's programs;
 - c) Any public official, member of a local governing body, or state or local legislator, or any members of such individuals' immediate family who exercises, function, or has responsibilities with respect to the PHA's programs;
 - d) Any member of the Congress of the United States; and
 - e) Any member of the classes described in paragraph 1 of this section must disclose their interest or prospective interest to the PHA and HUD.
2. The PHA's Code of Ethics Policy prohibits solicitation or acceptance of gifts or gratuities, in excess of nominal value, by any officer or employee of the PHA, any contractor or subcontractor, or agent of the PHA.

The PHA shall adhere to the Code of Conduct and shall sanction and/or terminate an officer, employee, or agent of violations consistent with applicable state or local law.

The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

CHAPTER 2 Outreach Program

A. Overview

1. The purpose of the PHA's outreach program is to inform eligible families of the availability of the public housing program and to attract a sufficient number and variety of applicants to fill all vacancies as they arise.
2. The PHA conducts affirmative marketing when needed to specified types of groups of families to assure that all eligible participants have an equal opportunity to utilize the program.
3. It will also conduct other outreach efforts from time to time if it finds that certain categories of families are not making applications in sufficient numbers to keep all dwelling units occupied.

B. Public Notice to Families

Each time the PHA receives or acquires an allocation of new units or its waiting list has been depleted, it will make known to the public, through publication in a newspaper of general circulation, minority media, and other suitable means, the availability and nature of its housing assistance for low-income families, unless it has earlier suspended application-taking and the size of the new allocation of dwelling units does not warrant resumption of such procedures. In addition to publishing the notice in local newspapers, the Agency may utilize free advertising via broadcast public service announcements.

1. The notice may also be posted at churches, public service/government offices, senior/youth community centers, Local Domestic Violence Shelter, Facebook, Local radio stations, and City distributed documents to broaden outreach efforts.
2. The public notice will:
 - a) Advise families where they may apply for the program;
 - b) Give a brief description of the program;
 - c) State that applicants must submit a written application if they wish to apply; and
 - d) Itemize the income limits for eligibility, including the low-income limits up to eighty percent (80%) of the local area median income (AMI).

C. Special Outreach

As needed, the PHA will take affirmative action in marketing the program, to assure that opportunities for program participation are adequately publicized to the following:

1. Families identified by the PHA as being among those least likely to apply. These families may include the frail elderly, homeless and disabled because of their inability to travel to the PHA's application office.
2. Families identified in the jurisdiction's Consolidated Plan as being expected to reside in the PHA's jurisdiction because of present and planned employment.

D. Equal Opportunity

All outreach efforts must be accomplished in accordance with the nondiscrimination requirements of Federal and state laws, and HUD guidelines for fair housing that require the use of the equal opportunity logo, statement and slogan.

E. Planning for Outreach

1. Within the constraints of its financial resources and the number of applicants needed, the PHA may utilize some or all of the following methods to attract eligible families:
 - a) Identify local resources for performing outreach functions, such as the PHA staff, community groups and agencies, elements of city and county governments, colleges and universities;
 - b) Post notices in places of employment, unemployment offices, welfare offices, Post Offices, grocery stores, churches, community halls, city and county offices, utility companies, day-care centers, Salvation Army offices, laundry facilities and senior citizen centers;
 - c) Place news stories in daily and weekly newspapers and other local publications;
 - d) Request public service announcements by local radio and television stations of English and any other language common to the area;
 - e) Make oral presentations before organizations, groups and agencies that serve the elderly, disabled, homeless and victims of domestic violence;
 - f) Place notices in church bulletins and newsletters; and
 - g) Encourage applicants and residents to inform their friends and relatives about the public housing program.

F. The Outreach “Message”

1. The outreach message will inform families of where, when and how families may apply for the program, and will also include information about the PHA’s application procedures.
2. The PHA will also stress characteristics of the housing program which appeal to low income families, such as the fact that the rent is based on income and includes the cost of utilities (except telephone, A/C and cable); and dwelling units may be more attractive in appearance than the single-family homes or rental units where applicants currently live. Applicants should also be advised that families, as well as elderly or disabled residents may own a pet (service animals for the disabled are allowed in any unit and are exempt from the PHA’s pet ownership rules on size, type and weight).

G. Outreach Techniques

Family characteristics, ethnic backgrounds, income levels, ages, health and employment opportunities are all among the various factors which influence family decisions on whether to apply for public housing. As needed, special efforts will be made to attract the following types of families when the number of residents in these categories is low in relation to all the resident population.

1. Non-elderly, "working poor" families receiving no welfare or other public assistance income, and whose members are only marginally employed.
 - a) Such families are usually less knowledgeable about government assistance programs, and although eligible, may be reluctant to apply, since they perceive such assistance as "charity" or "welfare".
 - b) To attract working poor families, the PHA will emphasize the confidentiality of the application and income/assets information, the objective of providing decent, safe, sanitary housing in good repair; and that having affordable housing may help the family improve financial condition and be a key factor in upward mobility and self-sufficiency.
2. Elderly families whose heads, spouses, or sole members are sixty-two (62) years of age or older.
 - a) Some senior citizens, like the working poor families, may be reluctant to apply for public housing. Limited mobility, a desire to retain their possessions and remain in familiar surroundings, and incorrect information about having to sacrifice assets may all influence an elderly person's decision on whether or not to apply for public housing.
 - b) To attract elderly families, the PHA will use some of the same techniques it uses on working poor families, including the following:
 - (1) Contacting the elderly person or family personally;
 - (2) Providing information to groups and organizations representing the elderly;
 - (3) Taking applications at the elderly person's home if transportation is unavailable or mobility is a problem; and
 - (4) Enlisting the support and assistance of groups, organizations and agencies representing the elderly.
3. Homeless Families
 - a) The PHA will contact welfare agencies, churches, food centers, temporary shelters, and other groups or locations serving homeless families.
 - b) The Agency may also engage in a Memorandum of Understanding with social service groups to facilitate referrals between the agencies.
4. Individuals with disabilities, families including a person with disabilities and families that include persons who may be unable to complete an application without assistance.
 - a) In hardship cases, the PHA may take applications at the home of applicants, or by mail, if requested to do so by applicants or their guardians.
 - b) The PHA may encourage interested service agencies to assist such as persons in the application process, and may contact organizations that provide services to the disabled, to explain the public housing program and distribute information and guidance on the program.
 - c) Dwelling units of any size may be used to accommodate elderly or disabled persons living alone, in pairs, or in small groups, in accordance with the PHA's Occupancy Standards.

5. Involuntarily displaced families, such as those affected by new streets, roads or highways which make their current dwellings uninhabitable, or families whose rental apartments have been converted into other types of housing, such as condominiums. Possible actions that can be taken include the following:
 - a) Monitor local news media reports of code enforcement, community redevelopment, rehabilitation and new housing developments;
 - b) Participate in the meetings of local governing bodies to monitor the responses of affected families;
 - c) Contact the officials, agents, or representatives responsible for the new situations and offer assistance in providing housing for the affected clients; and
 - d) If possible, obtain the names and addresses of affected families and mail letters to them on a housing program.

H. Monitoring and Evaluating Outreach Efforts

The PHA will establish and maintain internal documentation and monitoring procedures that will enable it to analyze the effectiveness of its outreach program. For example, it may design an appropriate form and, as part of its application process, ask each applicant how they heard about the public housing program, especially families among the groups identified as the least likely to apply. Such procedures will help the PHA determine the cost effectiveness of each method of outreach, as well as show where the outreach program needs to be improved, discontinued, or emphasized.

CHAPTER 3. Application for Admission

During open application periods, the PHA will accept applications at the main administrative office at 104 Avenida Amigos, Alamogordo, NM 88310. Each person or family seeking admission to a unit must submit a written application. When applications are being accepted, the PHA accepts them between the hours of 8:00 am to 11:30 am and 1:00 pm to 4:30 pm on Monday thru Friday each week. Families may contact the PHA on Monday thru Friday between the hours of 8:00 am to 12:00 pm and 1:00 pm to 5:00 pm to check waiting list status. Steps for processing the applications are outlined below. Accessibility is available or will be provided as a reasonable accommodation for the disabled.

1. Unless the PHA's waiting list is closed, it will accept an application from any person or family who wants to apply, even if an informal discussion indicates that the applicant may not be eligible.
2. The application must be signed by both the applicant and the PHA, date-stamped and time-stamped and referred to a central resident selection and assignment office for processing.
3. Each application will be processed only to the extent necessary to determine initial eligibility based on information provided on the application or placement on the waiting list.
4. The PHA will notify all applicants for general occupancy developments constructed prior to 1978, especially those with children who are under six (6) years of age, of the dangers of lead-based paint poisoning, and whether blood lead level screening is available for those children. This notification will be done even though the PHA may have a completed all lead-based paint abatement requirements for all development units. If blood level screening is available, the applicant will be advised to notify the PHA if any of the applicant's children under six (6) years of age who are tested have an elevated blood lead level.
5. During periods of time when application taking is suspended, the PHA will maintain a list of the names, addresses and telephone numbers of persons or families who are interested in admission. When application taking resumes, these persons will be contacted to advise them that the application period is open. The PHA will make it clear to such persons and families, however, that such a list does not constitute an application, and does not determine the date and time of application for the purpose of listing the person's or family's name on the Waiting List.
6. The application may be fully completed by the applicant or by the PHA and signed by the applicant. Incomplete applications will be denied by the PHA.
7. The PHA may request documentation from the applicant needed to verify the information provided at the time of application is taken. All information necessary to determine appropriate placement on the waiting list including documentation of need for a reasonable accommodation or family composition will be requested.
8. In addition to obtaining information from the applicant, the PHA will respond to questions from the applicant, and will provide whatever PHA-related information the applicant may desire, including information about the public housing program, the dwelling lease, and the number of bedrooms in units at various developments or sites.
9. The PHA will also inform applicants of any other housing assistance programs the PHA administers. If the applicant is interested, the PHA will advise the applicant how and where to

apply for those programs. The PHA will also advise applicants about housing assistance programs in other localities, where available.

10. The PHA may take applications at more than one location, so long as the applications are processed at a central location. The PHA may also take applications in outlying areas on specific days. The PHA will make special arrangements to take the applications of persons who are unable to come to the office, such as elderly or disabled persons. It may also utilize other locations as will afford applicants the greatest opportunity to exercise their rights under the resident selection and admissions policies and procedures. The staff may make accommodations for non-elderly/disabled families including, but not limited to making a home visit, mailing an application to the family, accepting application electronically or by telephone, etc.
11. The PHA will inform all applicants of the availability of any local preferences, and will give all applicants an opportunity to claim for a preference.
12. If the PHA determines that the notification of the availability of local preferences to all applicants on a waiting list is impracticable because of the length of the list, it may provide this notification to fewer than all applicants on the list at any given time. The PHA will, however, have notified a sufficient number of applicants that, on the basis of its determination of the number applicants who are on the waiting list who claim preferences, and the anticipated number of admissions:
 - a) There is an adequate pool of applicants who are likely to qualify for local preferences; and
 - b) It is unlikely that on the basis of the PHA's criteria for applying the local preferences, that any applicant who has not been notified would receive assistance before those who received notification.

CHAPTER 4. Record of Applications and Waiting List

The following are policies for documenting actions taken by PHA employees in processing applications for dwelling units.

A. Record of Applications/Waiting List

1. Each applicant's name will be placed on the PHA's Record of Applicant/Community-Wide Waiting List, based on the date and time the application is received and any applicable preferences.
 - a) The PHA will assure that at least forty percent (40%) of annual new admissions shall be an extremely low-income family. A very low-income family whose annual income does not exceed the higher of:
 - (1) The poverty guidelines established by the Department of Health and Human Services (DHHS) applicable to the family of size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or
 - (2) 30% of the median income for the area, as determined by HUD, with adjustment for smaller and larger family, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.
2. The Record of Applications/Waiting List will include, at a minimum, the following:
 - a) The applicant's name;
 - b) Date and time of application;
 - c) Race/ethnicity of the head of household;
 - d) Unit size required based on PHA occupancy standards;
 - e) Determination of eligibility or ineligibility;
 - f) The applicant's preferences;
 - g) The date and time the applicant was offered a unit;
 - h) The unit number and location;
 - i) The date the applicant was assigned a unit, or the date the applicant rejected the assignment; and
 - j) Any circumstances pertaining to assignment of a unit, such as removing the applicant's name because the applicant requested it be done;
3. Consistent with the objectives of Title IV of the Civil Rights Act of 1964, other statutory requirements and HUD regulations and policies the PHA will make offers from the Record of Applications only based on the date and time of application local preferences, and bedroom size needed.

B. Organization of the Waiting Lists

1. The Record of Applications (Waiting List) will be organized in such a manner that the PHA can easily identify the date and time the application was submitted, the applicant's preferences for admission (based on the local preferences), the size and type of unit needed, and other decision-making factors.
2. The PHA will not solicit a statement from any applicant regarding his or her desire to live in a particular development or group of developments, except that the PHA may allow applicant to designate the development(s) in which they wish to reside.
3. Waiting lists are community-wide in scope. Changes in the scope of the waiting list will be duly adopted by the Board of Commissioners and incorporated into this document by reference following a period of thirty (30) days posting.

C. Updating the Waiting Lists

1. The PHA may update (purge) its waiting list at least every twelve (12) months in order to remove the names of applicants who are no longer interested in being admitted, no longer qualify for admission or who cannot be located.
2. The PHA will document the reason for removing any applicant's name from the waiting list(s).
3. The PHA requires applicants to report, in writing any changes in family composition or circumstances, and any significant changes in income or assets that would affect the family's eligibility, the type of development, or the size and type of unit needed.
4. If an applicant does not respond to the PHA's efforts to contact them regarding continued interest, updates, additional information or offers of assistance, the applicant will be removed from the waiting list and their application withdrawn.
5. Application Rejection and Removal from the Waiting List

The PHA will remove an applicant's name from the waiting list under the following conditions:

- a) The applicant requests that their name be removed; or
- b) The applicant is advised in writing to inform the PHA of the applicant's continued interest by a particular time, and the applicant fails to do so; or
- c) The PHA makes reasonable efforts to contact the applicant to determine if there is continue interest, but the PHA is unsuccessful in locating the applicant; or
- d) The PHA makes reasonable efforts to contact the applicant to schedule interviews necessary to complete the application process or to obtain information necessary to process the application, and the applicant fails to respond; or
- e) The applicant fails to keep a scheduled interview or provide necessary information for application processing or waiting list maintenance. The PHA will notify the applicant that he/she has ten (10) to fifteen (15) working days to reschedule or provide requested information. If the applicant fails to respond, their application will be withdrawn. However, the PHA will consider mitigating circumstances such as health problems or lack of transportation in determining whether the application should be withdrawn.
- f) The PHA notifies the applicant of its intention to remove the applicant's name from the waiting list(s), because the applicant no longer qualifies for Public Housing;

- g) The applicant fails to complete any required pre-occupancy classes/orientation;
- h) The applicant fails to pay an existing utility balance resulting in denial of service by the utility supplier;
- i) If after initial determination of eligibility, a member of the applicant family has:
 - (1) Become required by law to register for lifetime as a sex offender.
 - (2) Become involved in drug or violent criminal activity as determined by a conviction.
 - (3) Perpetrated domestic violence including dating violence, sexual assault, or stalking. Family members who were involved in such acts as victims may be considered for admission only if the perpetrator is no longer in the household.
 - (4) The applicant fails to satisfy Tenant Selection Criteria as outlined in this policy.

The PHA will notify the applicant of the rejection, in writing, and advise him/her of their right to an informal meeting.

- 6. The PHA will take the following actions when updating the waiting list:
 - a) Mail a notice to each applicant on the waiting list advising them of the need to update their application. The notice will include instructions for responding to the letter and an update form to be completed and returned to the PHA.
 - b) Applicants will have ten (10) calendar days from the postmark date of the update notice to respond by mail or in person.
 - c) If applicants fail to respond to either the update letter or if the letter is returned postmarked by the post office as undeliverable, the PHA will withdraw their application.
 - d) If the reason an applicant does not respond to the PHA's attempt to contact him/her is related to a disability, the PHA will, as a reasonable accommodation, reinstate the applicant in their former position on the waiting list.

D. Closing the Waiting List

- 1. If the PHA has enough applicants to fill expected vacancies over a period of one (1) year, the PHA may close the waiting list.
- 2. The PHA will close the waiting list by publicly announcing any decision to suspend or to restrict the taking of applications. It will not reopen the list until it publicly announces when it will resume the taking of applications.
- 3. If the PHA has too many applicants it may close all waiting lists or close portions of the waiting list by type of development, or size and type of dwelling unit as appropriate.
- 4. The PHA will not close a waiting list if closing the list would have a discriminatory effect that would be inconsistent with applicable civil rights laws.
- 5. Prior to closing a waiting list, the PHA will assess the waiting list to determine that it has sufficient applicants to fill expected vacancies for a minimum of one (1) year.

E. Opening the Waiting List

The opening of the Waiting List shall be announced through public notices as follows:

- 1. The notice shall be placed in a newspaper of general circulation, in a minority publication and in plain view in the application office.

2. Postings may be made at locations throughout the community and may be sent to social service agencies.
3. The notice shall contain where and when interested parties can apply.
4. The notice shall state limitations on who may apply (i.e. bedroom size, etc.).
5. The PHA may open all waiting lists or only portions of waiting lists by type of development or size and type of dwelling unit as appropriate.
6. The notice shall contain the Equal Opportunity Housing logo and non-discrimination statement in the advertising message.
7. New applicants with preferences would not qualify before other applicants with identical preferences already on the waiting list.

F. Applicant Files

The PHA will establish and maintain an individual file containing information on each applicant household. Such files will be retained for at least three (3) years after the audited Public Housing Assessment System (PHAS) submission for that year.

Material secured under a criminal background check or drug treatment center check will not be retained in the applicant file but will be segregated in a secure location under lock and key. Following a decision on acceptability of an applicant, the criminal background check and drug treatment program information will be removed and destroyed (shredded).

This procedure is subject to delay if the applicant requests an informal review with respect to denial of their application based on information received from either source. The PHA may retain the information until the statute of limitations passes for filing a civil lawsuit if the PHA believes there will be litigation.

Applications and material submitted by the family will be retained for a minimum of five (5) years if there is a U.S. Citizenship and Immigration Services (CIS) [formerly the Immigration and Naturalization Service (INS) appeal and/or an informal hearing with the PHA concerning the citizen/non-citizen documentation.

Applicant files that have been the subject of an appeal to the U.S. Citizenship and Immigration Services (CIS) or have been used in an informal hearing with the PHA concerning the citizen/non-citizen documentation will contain the following:

- a) The original application for housing assistance;
- b) Form HUD 92006: Supplemental Information to Application for Federally Assisted Housing;
- c) Photocopies of any original documents (front and back), including Social Security cards, birth certificates, photo identifications and original CIS documents. (Under no circumstances will photocopies of Federal checks be made or retained in applicant/resident files);
- d) All signed verification consent forms including Form HUD-9886 executed by all household members age 18 and older;
- e) The CIS verification results (both primary and, if applicable, secondary);

- f) The request for a CIS appeal;
- g) The final CIS determination;
- h) The request for a PHA informal hearing; and
- i) The final PHA informal hearing decision.

Chapter 5. Basic Eligibility Requirements

Pursuant to HUD regulation the Housing Authority is permitted to admit only eligible families to the Public Housing Program. To be eligible, an applicant must meet the PHA's definition of family, must be income eligible and must be a citizen or a non-citizen who has eligible immigration status. In addition, once the family is determined to be eligible, the family must meet the PHA's screening criteria regarding family behavior and suitability for tenancy. These requirements are outlined below.

A. General Eligibility Requirements

The PHA will determine whether an applicant for participation in the low-rent housing program qualifies as a family, is income-eligible, has disclosed and verified Social Security Numbers for each household member, is a U.S. Citizen or National or meets eligible non-citizen immigration status, and has no history of drug/alcohol abuse and/or record of violent crime.

1. Definition of a Family

The applicant must qualify as a family. A family may be a single person or a group of persons.

Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

- a) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
- b) A group of persons residing together and such group include, but are not limited to:
 - (1) A family with or without children (a child who is temporarily away from home because of placement in foster care is considered a member of the family);
 - (2) An elderly family;
 - (3) A near-elderly family;
 - (4) A disabled family;
 - (5) A displaced family; and
 - (6) The remaining member of a tenant family.

Discrimination on the basis of familial status is prohibited, and a group of persons may not be denied solely on the basis that they are not related by blood, marriage or operation of law.

The term "Disabled Person" (or "person with a disability") does not include disability based solely on the basis of drug or alcohol dependence.

Definitions of "disabled family", "elderly family", "near elderly family", "sexual orientation" and "gender identity" are found in Appendix L – "Definitions" of this document.

2. Special Eligibility Provisions Relating to Applicants Requiring a Live-In Aide

The live-in aide must submit information as requested and for review by the PHA for eligibility under the Tenant Selection Criteria of this policy, including the criminal background check. If the PHA determines an individual proposed as a live-in aide to be ineligible, the resident or applicant may propose an alternate live-in aide for screening or may appeal the determination of ineligibility to the PHA.

3. Unit Size Consideration

The applicant or resident and the live-in aide may each be allocated a separate bedroom. However, because the availability of 2-bedroom units in mixed population developments may be limited, the PHA may allow the resident or applicant to choose from the following options with the understanding that transfer requests will not be honored after occupancy:

- a) To be considered for a 2-bedroom unit in a mixed population development;
- b) To be considered for a 1-bedroom unit in a mixed population development;
- c) To be considered for a 2-bedroom unit in a general occupancy development.

Applicants requesting placement in a 2-bedroom unit in a mixed population development will be placed on the 2-bedroom waiting list in the order of the applicant's application date.

A live-in aide who has been approved for occupancy by management is added to the lease by means of a live-in aide amendment. This amendment specifically states that a live-in aide does not have rights to occupy a PHA unit as the Remaining Member of a Tenant Family if the resident requiring their services vacates the unit or dies.

The Head of Household resident is responsible for all acts of all household members with respect to the requirements of the dwelling lease. Any violation of lease provisions by the live-in aide may be cause for eviction of the household.

4. Income Eligibility

a) Overall Income Eligibility for Admission

No family other than a low-income family as defined in regulations is eligible for admission to Low-Rent Public Housing units. An exception to this regulation may be made by PHAs with 250 or fewer units if they have no eligible applicants and advertising does not result in additional eligible applicants.

At least forty percent (40%) of new admissions annually must be extremely low-income families. This includes families who, at the time of application and/or admission, have no countable income. *See Chapter 7. Applicant Screening and Denial of Admission*, for policies applicable to applicants reporting "zero" income.

b) Family Income

A family's annual income, at the time of admission, may not exceed the income limits established by HUD and published in the Federal Register applicable to the PHA's jurisdiction, for the current year. (See Appendix D.)

The PHA will complete verification of income eligibility when application is received prior to the family being offered a unit. However, any change in income, family size or composition can occur during the period of time between that verification and the offer of housing. Since such changes can affect eligibility, the family must immediately report such changes so that the correct rent and unit size can be determined.

- c) The PHA shall comply with HUD prescribed reporting requirements so that HUD may maintain reasonably current data. Records of admissions of low-income families will be maintained by the PHA to ensure that admission requirements and targets are met.

- d) The PHA will not commence eviction proceedings, or refuse to renew a lease, based on the income of the resident family unless:
 - (1) It is identified, for possible rental by the family, a unit of decent, safe, sanitary housing in good repair, of suitable size, available at a rent not exceeding the Tenant Rent; or
 - (2) It is permitted to do so by local law.

5. Background

The following background factors will limit admission of families who have as a household member any of the following:

- a) Persons convicted of manufacturing or producing methamphetamines on the premises of any assisted housing are permanently denied admission to public housing. **The PHA will not waive this criterion;**
- b) Any person determined to be currently using an illegal substance will be denied admission;
- c) Persons determined to be currently abusing alcohol in a way that will interfere with the safety or right to peaceful enjoyment of other residents will be denied admission;
- d) Any household with a family member subject to a lifetime registration under a state sex offender registration act will be denied admission. **The PHA will not waive this criterion;**
- e) Any person determined to be fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, (in the case of the State of New Jersey is a high misdemeanor).
- f) Any person violating a condition of probation or parole imposed under Federal or State law.

The PHA may waive the denial of admission if the drug or alcohol abuser can demonstrate successful current participation in, or completion of, a supervised drug/alcohol rehabilitation program. No exception will be made for persons convicted of methamphetamine production or manufacture on the premises of any assisted housing and those subject to the sex offender lifetime registration requirement.

6. Mandatory Disclosure and Verification of Social Security Numbers (SSN)

Prior to admission, all applicant family members must disclose and provide acceptable documentation of the Social Security Number (SSN) assigned to each household member by the Social Security Administration. This includes any SSN numbers assigned to applicant/participant family members under any other names.

All household members, six years old or older, approved by the PHA to be added after admission are required to disclose and provide documentation of SSNs at the time the request is made to add the member.

If a child, under six (6) years old was added to the assistance applicant family in the six-month period prior to the household's date of admission, documentation verifying the child's SSN information need only be supplied within 90 days of the date of admission.

One additional 90-day extension must be granted, if the PHA determines the applicant's failure to meet the first timeline could not be reasonable foreseen or was outside his/her control.

Should a family member not have a Social Security number, they must certify that they do not, in fact, have a number.

7. Penalties for Failure to Disclose and/or Provide Documentation of the SSN

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

a) Applicants

PHA shall deny the eligibility of an applicant if each member of the household who is required to disclose their SSN fails to disclose and/or provide documentation of their individual SSN.

If the family is otherwise eligible to participate in the public housing program, PHA shall allow the family to maintain their position on the waiting list for a period of sixty (60) days to permit the family to obtain and disclose the required SSN information. During this period, if a unit becomes available and the household members have not disclosed their SSN, PHA shall offer the available unit to the next eligible applicant family on the waiting list.

b) Program Participants

PHA shall terminate the tenancy of the entire household of a public housing participant family if the household members who are required to disclose and document their SSN fail to do so.

If the family is otherwise eligible for continued occupancy, PHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period not to exceed ninety (90) calendar days from the date PHA determined the family noncompliant with the SSN disclosure and documentation requirement, if PHA determines.

(1) The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and

(2) There is reasonable likelihood that the family will be able to disclose the SSN and provide documentation of the SSN by the deadline.

PHA shall terminate the tenancy of the entire household if the family is unable to comply with the requirements by the specified deadline.

8. Verification of Social Security Numbers

Social Security verification requirements are outlined in 24 CFR Part 5.216 and 5.218 – Disclosure of Social Security and Employer Identification Numbers.

Social Security numbers (SSN) for each household member must be disclosed as a condition of eligibility by all applicants and tenants in the public housing program (24 CFR 5.216)

An individual who previously declared to have eligible immigration or eligible citizenship status may not change his/her declaration to not contend to have eligible immigration status for the purpose of avoiding compliance with the SSN disclosure and documentation

requirements for penalties associated with noncompliance of these requirements (PIH Notice 2012-10).

The head of household may not opt to remove a household member from the family composition for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance of these requirements.

a) Exception to this requirement are:

- (1) Those individuals who do not contend to have eligible immigration status and have not been assigned an SSN.
- (2) Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. PHA shall confirm HUD's validation of the participant's SSN by viewing the household's EIV Summary Report or the EIV Identity Verification Report.
- (3) Existing tenants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption shall continue even if the individual moves to a new assisted unit.

b) The PHA shall request applicants and tenants to disclose and provide documentation of each household member's SSN in the following acceptable forms:

- (1) Original SSN card Issued by the Social Security Administration (SSA);
- (2) Original SSN-issued document, which contains the name and SSN of the individual, or;
- (3) Original document issued by a federal, state, or local government agency which contains the name and SSN of the individual.

c) To verify the disclosed SSN for each household member, the PHA, as required by regulation, shall:

- (1) Obtain the documentation listed above;
- (2) Make a copy of the documentation submitted and retain the copy in the file folder;
- (3) Record the SSN accordingly in the Family Report (HUD-50058) and transmit the form to HUD with in a timely manner. The PHA will transmit the HUD-50058 no later than 30 calendar days of receiving the SSN documentation to enable HUD to initiate its computer matching efforts for current program participants.

(NOTE: HUD does not initiate computer matching efforts for applicants)

d) If an Applicant or Resident is able to disclose the Social Security number but cannot meet the documentation requirements, the Applicant or Resident must sign a self-certification to that effect. The Applicant/Resident or Family member will have an additional sixty (60) calendar days to provide proof of the Social Security number. If the documentation is not provided, the Family's lease may be terminated and the Family evicted or the Applicant not admitted.

9. Rejection of Documentation

PHA may reject the documentation of the SSN provided by the applicant or tenant for the following reasons:

- a) The documentation is not an original document; or
- b) The original document has been altered, mutilated, or not legible; or
- c) The document appears to be a forged document (does not appear to be authentic).

The PHA shall explain to the applicant or tenant the reason(s) the document is not acceptable. The PHA shall then request the individual to obtain acceptable documentation of the SSN and submit the document to PHA within thirty (30) days.

The PHA shall verify the SSN via the EIV Summary Report or the EIV Income Report and shall maintain a copy of the report in the family file as confirmation of compliance with SSN disclosure, documentation, and verification requirements.

Once the household member's SSN verification status is classified as verified, the PHA shall remove and destroy (by shredding or burning) the copy of the acceptable form of documentation from the family file no later than by the next re-exam of family income or composition. Retention of the EIV reports in the tenant file shall be considered adequate.

10. Individuals without an assigned SSN

Examples of some individuals who may not have a SSA-assigned SSN are listed below. This list is not all-inclusive.

- a) U.S. Newborn children (eligible citizens - will be issued a SSN upon SSA confirmation of birth).
- b) Noncitizens lawfully present in the U.S.
- c) Noncitizens unlawfully present in the U.S.

Noncitizens lawfully present in the U.S. will be issued a SSN upon SSA confirmation of the individual's DHA documentation or confirmation that the individual is required by law to provide a Social Security number in order to receive assistance benefit that they already have qualified for.

Noncitizens unlawfully present in the U.S. cannot be assigned a Social Security Number.

The PHA shall require that a citizen or lawfully present noncitizen who state that they have not been assigned a SSN by the SSA to make such declaration in writing and under penalty of perjury.

11. Addition of a New Household Member

- a) New household member at least six (6) years of age or under the age of six (6) and has an assigned SSN:

When the family requests to add a new household member in this age category, the Family must disclose to the PHA the assigned SSN number of the new household member and provide the PHA with the acceptable form of documentation at the time of such request. If the family is unable to provide the PHA with the required documentation of the SSN, the PHA will not add the new household member until the family provides such documentation.

b) New household member under the age of six (6)

When the family requests to add a new household member in this age category and the new member does not have an assigned SSN, the family must disclose the assigned SSN and provide the PHA with the acceptable form of documentation within ninety (90) calendar days of the child being added to the household.

If the PHA determines that the family was not able to comply with the SSN disclosure and documentation requirement due to circumstances that could not have reasonably been foreseen and were outside the control of the family, the PHA will, as required, will grant the family an additional 90-day period to comply.

c) Examples of circumstances outside the control of the family include but are not limited to:

- (1) Delayed processing of SSN application by SSA
- (2) Natural Disaster
- (3) Fire
- (4) Death in family

The PHA shall require the family to provide documentation for the unforeseen circumstances out of the control of the family to be presented.

During the time allotted for the family to comply with the SSN disclosure and documentation requirements, the child shall be included as part of the assisted household and shall be entitled to all the benefits of being a household member.

If the family does not comply with the SSN disclosure and documentation requirements by the expiration of the allotted time provide to the family, the PHA shall terminate the family's tenancy.

12. Authorization for the Release of Information/Privacy Act Notice

Each member of the applicant family who is eighteen (18) years of age or older, must sign an Authorization for the Release of Information/Privacy Act form (HUD-9886) annually authorizing HUD and the PHA to request information from specified sources necessary to verify the household's income. A household member who turns 18 during the year will be required to sign a HUD-9886 at the family's next annual or interim recertification.

Any adult that is requested to be added to the household composition must sign the authorization form at the time that the request is made.

The sources of information to be obtained by HUD and/or the PHA will be in accordance with the limitations addressed for each source in form HUD 9886.

Critical implementation factors require the PHA to utilize other consent forms to verify information other than the limited sources permitted by form HUD-9886. The information requested is pertinent to determine the family's eligibility and/or level of assistance the PHA can provide.

B. U.S. Citizen, U.S. National or Eligible Non-Citizen Immigration Status

All applicants for public housing must meet the following requirements:

1. A U.S. Citizen or U.S. National must sign a declaration of U.S. Citizenship or status of U.S. National;
2. Non-citizens who are sixty-two (62) years of age or older, must provide the following:
 - a) A signed declaration of eligible immigration status; and
 - b) Proof of age document
3. All other non-citizens must:
 - a) Sign a declaration of eligible non-citizen immigration status;
 - b) Provide original documents which verify status; and
 - c) Sign a verification consent form.
4. All declarations will be verified.

Every adult family member must sign either a declaration of U.S. Citizenship or eligible immigration status. For each child, and adult who is responsible for the child and who is residing in the assisted dwelling unit, must sign a declaration. The family must identify in writing any household members who do not claim to have eligible status.

C. Delay of Assistance to Applicant

Housing Assistance to an applicant family may not be delayed or denied on the basis of ineligible immigration status of a family member if the primary and secondary verification of any immigration documents that were timely submitted has not been completed. However, the PHA will delay or deny assistance to a family until at least one family member has been determined eligible for assistance.

1. Delay to an applicant is permissible after the conclusion of the USCIS appeal process but assistance is not denied until the conclusion of the PHA informal hearing process if the family requests an informal hearing.
2. Other events causing denial of assistance are:
 - a) Evidence of citizenship (i.e. The declaration) or eligible immigration status is not submitted by the date specified in the written notice or by the expiration of any extension granted in accordance with a written notice of an extension period; or
 - b) Evidence of citizenship or eligible immigration status is timely submitted, but USCIS primary and second verification does not verify eligible immigration status of a family member and;
 - (1) The family does not pursue USCIS appeal or PHA informal hearing rights as provided in this section; or
 - (2) The USCIS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

3. A notice of denial or termination of assistance shall inform the family:
 - a) That financial assistance will be denied or terminated with the reasons for the denial or termination; and
 - b) That they may be eligible for prorated assistance; and
 - c) That they have the right to request an appeal to the USCIS of the results of the secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with USCIS appeal procedures to USCIS; and
 - d) That the family has the right to request an informal hearing with the PHA within fourteen (14) days either upon completion of the USCIS appeal or in lieu of the USCIS appeal; and
 - e) That the PHA cannot overrule the CIS decision regarding eligible immigration status.

D. Appeal to the U.S. Citizenship and Immigration Services (USCIS)

1. Submission of the request of appeal

Upon receipt of notification by the responsible entity that USCIS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the individual or family of the results of the USCIS verification. After notification of the USCIS decision on appeal, or in lieu of an appeal request to the USCIS, the individual or family may request that the responsible entity provide a hearing. This request must be made either within thirty (30) days of receipt of the notice described in paragraph (d) of Section 5.514, or within thirty (30) days of receipt of the USCIS appeal decision issued in accordance with section 5.514. The family shall make the request for an appeal by communicating that request in writing directly to the USCIS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing. For good cause shown, the responsible entity shall grant the family an extension of the time within which to request an appeal.

2. Documentation to be submitted as part of the appeal to USCIS

The family shall forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the CIS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the USCIS to record immigration status verification results. The PHA will provide the family a copy of the G-845S that documents the ineligible status of a family member.

3. Decision by USCIS

- a) When the decision will be issued. The USCIS will issue to the family, with a copy to the responsible entity, a decision within thirty (30) days of the receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the USCIS is unable to issue a decision within the thirty (30) day time period, the USCIS will inform the family and the responsible entity of the reasons for the delay.
- b) Notification of the USCIS decision and of informal hearing procedures: When the PHA receives a copy of the USCIS decision, the PHA's shall notify the family of its right to

request an informal hearing on the PHA's ineligibility determination in accordance with the PHA's grievance procedures.

4. There will be no delay, denial or termination of assistance until completion of the CIS appeal process and/or the PHA appeal of a family member's ineligible status is completed.

E. Non-Eligible Immigration Status

Individuals who contend not to have eligible immigration status must identify themselves to the PHA that they elect not to provide documentation of eligible immigration status or sign a declaration of eligible non-citizen immigration status. However, family members must identify in writing to the PHA the family member(s) who will elect not to contend having eligible status. Family members who elect not to provide documentation concerning eligible non-citizen immigration status shall be required to comply with other program requirements or assistance may be denied to the entire applicant family.

If a family member has chosen not to contend to have eligible immigration status, the PHA may admit the family under Prorated Assistance. See the section noted Prorated Assistance to determine how the family's rent will be calculated.

CHAPTER 6. Selection Policies and Preferences System

A. Policies and Requirements

These selection and preference policies are designed to:

1. Give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking assistance, qualify for one or more of the selection preferences adopted by the Board of Commissioners.
2. Additionally these policies:
 - a) Are based on local housing needs and priorities as determined by the PHA using generally accepted data sources, including its waiting list, public comment on the PHA's Annual Plan, and requirements of the Consolidated Plan;
 - b) Direct the PHA to match characteristics of an applicant family with the type of unit available, for example, number of bedrooms;
 - c) Provide preferences to elderly and/or disabled families for nits in a public housing mixed population (formerly designed elderly) developments;
 - d) Prohibit automatically denying admission to a particular group or category of otherwise eligible applicants (e.g. unwed mothers or families with children born out of wedlock); nor apply any criteria or consider any information pertaining to attributes or behavior that may be imputed by some to a particular group or category. All criteria applied or information considered in administering this policy shall relate solely to the attributes/behavior of the individual members of the family being considered for assistance;
 - e) Assure that selection by the PHA among otherwise eligible applicants is objective and reasonable;
 - f) Are consistent with PHA's responsibilities as a public body; and
 - g) Are in compliance with state, local and Federal laws and regulations, including the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, the provisions of the Annual Contributions Contract between HUD and the PHA, and 24 CFR Part 5.216-5.218, "Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and participants in Certain Housing Assistance Programs"
 - h) Provide that a family that is on the Section 8 waiting list will not lose its place on the waiting list by applying for admission to the public housing developments;

B. Preference Policies:

1. Are duly adopted:
2. The PHA shall notify applicants on the waiting list of any changes to selection preferences through written notification. Applicants will be given an opportunity to show that they qualify for such preference(s). If it is not feasible to notify all applicants because of the length of the waiting list, the PHA may provide this notification to fewer than all applicants at any given time;
3. The PHA shall publicize preferences by posting copies in each office where applications are received, and by furnishing copies to applicants or residents upon request;

C. Local Preferences and Ranking

The Housing Quality and Work Responsibility Act of 1998 permanently eliminated the Federal preference requirement; however, PHAs may adopt the Federal preference language and criteria as their local and/or ranking preferences.

The PHA will select and house applicants in accordance with the following preferences and priorities, in the order listed:

1. Limitations on Admission
 - a) Types of developments and units available;
 - b) Occupancy Standards (limitation on the minimum and maximum number of household members permitted to live in dwelling units of specified sizes).
2. Selection Preferences, as follows, in the order listed.

	Preference	Ranking or Point Value
1	Veteran: A family member being a veteran, spouse or surviving spouses or minor children of veterans	4
2	Elderly/Disabled with the head of household being elderly or disabled	3
3	Working/Unable to work adult family member that is: ▪ Currently enrolled in an employment training program ▪ Currently working at least twenty (20) hours per week ▪ Attending school on a full-time basis ▪ Receiving income based on their inability to work	3
4	Victims of Domestic Violence	2
5	Displaced Households: ▪ Families displaced by city, state, or federal government action; or ▪ Families whose dwelling has been extensively damaged or destroyed as the result of a disaster formally recognized pursuant to Federal Disaster Relief Laws	1

3. Date and Time of Application (in each of the above circumstances)

Applicants who meet all the eligibility requirements and who qualify for a preference will be assisted first according to the date and time of application. After all applicants with verified preferences are assisted, the PHA will then contact applicant families who are on the waiting list, according to date and time of application, and bedroom size needed.

4. Eligibility for Multiple Preferences

In the event that a family qualifies for multiple preferences, the PHA will award the points for the highest ranked single preference for which the family qualifies. Selection will not be based on the points from multiple preferences.

5. Denial of Local Preference(s) claim

Applicants must provide appropriate documentation to substantiate their claim for a local preference. Families who cannot provide the appropriate documentation to the agency will be notified in writing that they do not qualify for a local preference.

The PHA will provide a written notice if an applicant does not qualify for a preference. This notice will contain: a brief statement of the reasons for the determination, and a statement that the applicant has the right to meet with the PHA's designee to review the determination. This request must be received by the PHA no later than fourteen (14) calendar days from the postmarked date of the notice.

If the applicant requests the meeting, the PHA shall designate someone to conduct the meeting who is not the person who made the initial determination or reviewed the determination, a subordinate, or any other person designated by the PHA. A written summary of this meeting would be retained in the applicant's file. A letter informing the applicant of the final determination as to their local preferences status will be mailed within ten (10) days from the conference/hearing.

CHAPTER 7. Applicant Screening and Denial of Admission

In screening applicants, the PHA employees will observe PHA policies/procedures and will verify all information submitted by the applicants. (See *Chapter 8. Verifications of Eligibility.*) The following outlines the actions to be taken in the process.

A. Applicant Screening

1. The resident selection criteria, and the screening information to be considered by the PHA, will be reasonably related to the individual attributes and behavior of an applicant, and will not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member.
2. Suitability screening attempts to determine if the applicant is likely to interfere with other residents by adversely affecting their health, safety or welfare, or affect adversely the physical environment or financial stability of the development if the applicant were admitted. Relevant information concerning the habits or practices to be considered may include, but is not limited to:
 - a) Past performance in meeting financial obligations, especially rent and prior rental history with the PHA, if applicable;
 - b) Rental history from previous owners/landlords or another PHA;
 - c) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety, or welfare of other residents;
 - d) Information from personal references;
 - e) Information from previous owners/landlords concerning housekeeping that would create health or sanitation problems;
 - f) A history of criminal activity involving drug-related activity, a pattern of alcohol abuse, crimes of physical violence to persons or property, or other criminal acts which would adversely affect the health, safety or welfare of other residents;
 - g) A conviction for manufacturing or producing methamphetamine (speed). These individuals will be permanently barred from public housing; or
 - h) Eviction from federally assisted housing because of drug-related criminal activity. These individuals and their families are ineligible for admission to public housing for a three (3) year period beginning on the date of such eviction.

The PHA may waive this requirement if:

- (1) The person demonstrates successful completion of a rehabilitation program approved by the PHA, or;
- (2) The circumstances leading to the eviction no longer exist. For example, the individual involved in drugs is no longer in the household because the person is incarcerated.
3. Applicants must conform to the occupancy standards on family size, family composition and extenuating circumstances discussed in *Section 12: Occupancy Standards*.
4. The PHA will use up-front or third-party verification of all information whenever possible and the return envelope will be retained in the resident's file. If such up-front or third-party documentation is not available, the reason must be documented in the file.

5. The family will also submit, directly to the PHA, all documentation required for purposes of determining or auditing a family's eligibility to receive housing assistance, for calculating the family's adjusted income for Tenant Rent, for verifying related information, or for monitoring compliance with equal opportunity requirements. Failure to provide requested documentation will result in the denial of assistance.

6. Home Visits

The PHA may conduct a home visit to consider if the conditions they observe are the result of the resident's treatment of the unit or are caused by the unit's overall substandard condition. The PHA will give at least two (2) days' written notice to all applicants or residents. Reasons for a home visit may include, but not be limited to, the following circumstances:

- a) Conflicting or negative rental history received from previous landlords;
- b) Conflicting or negative information received from personal references;
- c) Applicant provides no previous rental references;
- d) Applicant provides only related personal references; or
- e) Applicant has no credit history.

B. Consideration of Favorable Factors

In the event unfavorable information with respect to an applicant is received, the PHA will give consideration to the time, nature and extent of applicant's conduct, and to factors which might indicate a reasonable probability to favorable future conduct or financial prospects, including:

1. Evidence of successful completion of an appropriate rehabilitation program for drug or alcohol-related problems (requiring certification from a health professional, or State certified program). The applicant or family may be required to provide evidence of otherwise being rehabilitated successfully (i.e., participation in AA, ALANON, or other drug/alcohol support group);
2. The seriousness of the offending action;
3. The effect on the community of denial or the failure of the PHA to take such action;
4. The extent of participation by the leaseholder in the offending action;
5. The effect of denial of admission on household members not involved in the offending action;
6. The demand for assisted housing by families who will adhere to lease responsibilities;
7. The extent to which the applicant has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
8. The effect of the PHA's action on the integrity of the program;
9. The willingness of the applicant to exclude the offending household member in order to be admitted to the housing program, where the identified member has participated in or been culpable for action or failure to act that warrants denial;
10. Evidence of the applicant family's participation in or willingness to participate in social services or other appropriate counseling programs, and the availability of such programs; and

11. Evidence of the applicant family's willingness to attempt to increase family income, and the availability of training or employment programs in the locality.

C. Denial of Admission

The PHA has established standards that prohibit admission of a household to the PHA's public housing program for certain drug and criminal activities. All standards shall be applied uniformly.

1. Pursuant to 24 CFR Part 960.204 the PHA must deny admission to:
 - a) Persons evicted from federally-assisted housing for drug-related criminal activity for three (3) years from the date of eviction; (See Definition of federally-assisted housing.)
A PHA may admit the household if the PHA determines:
 - (1) The evicted household member who engaged in the drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or
 - (2) The circumstances leading to the eviction no longer exists (for example, the responsible household member has died or is imprisoned).
 - b) Persons currently engaging in illegal use of drug or where the PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents'
 - c) Persons who have ever been convicted for manufacture or production of methamphetamine on the premises of federally assisted housing; (see Definitions to determine federally-assisted housing).
 - d) Persons subject to lifetime registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and in States where members of the applicant household are known to have resided;
 - e) Persons that abuse or show a pattern of abuse of alcohol that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
2. The PHA defines "currently engaged in" as any occurrence within the last three (3) years.
3. The PHA will use criminal history reports as detailed in Chapter 8 of this policy in gathering applicant background information.
4. Pursuant to the Violence Against Women Act, the PHA must and shall deny admission to any member of the household who is a perpetrator of domestic violence, dating violence, sexual assault, or stalking.

D. Falsified or Misrepresented Information

If the PHA determines that an applicant has falsified or misrepresented family income, composition, circumstances, conduct or behavior, the PHA will, on the basis of such falsification or misrepresentation, find the applicant ineligible for admission to a PHA dwelling unit. In justifiable cases, the PHA may take such other action as deemed advisable.

E. Mitigating Circumstances

Screening applicants who claim mitigating circumstances:

1. If unfavorable information about an applicant is received, the applicant will be provided an opportunity to present mitigating circumstances. The PHA will consider the time, nature and extent of the applicant's conduct. These mitigating circumstances must be verifiable.
2. Mitigating circumstances are facts relating to the applicant's unsuitable rental history or behavior which, when verified, would indicate both: (a) the reason for the unsuitable behavior; and (b) that the reason for the unsuitable rental history or behavior no longer applies or is under control and the applicant's prospect for lease compliance is an acceptable one, justifying admission. Such mitigating circumstances would overcome or outweighs information already gathered in the screening process.
3. If the mitigating circumstances relate to change in disability or handicap, the PHA shall have the right to verify the information or to request further information which is reasonably needed to verify the mitigating circumstances, even if such information is of a medically confidential nature.
4. An applicant who is a victim of domestic violence, dating violence, sexual assault, or stalking as afforded certain protections pursuant to the Violence Against Women and Department of Justice Reauthorization Act of 2005, as amended by a bill in August 2006.
5. Protection of Victims of Domestic Violence

Incidents of domestic violence, dating violence, sexual assault, or stalking shall not be good cause for denying victims access to or terminations from the Public Housing Program or for terminating a lease held by a victim of such violence.

The PHA, at its discretion may request certification of the claim to be a victim of domestic violence, dating violence, sexual assault, or stalking.

If certification is requested, the applicant must provide it within 14 business days from the date of the request (or within the time allotted by any extension by the PHA). Any of the following methods is an acceptable response by the applicant to the request:

- a) Completion of the form HUD 50066: Certification of Domestic Violence, Dating Violence or Stalking.
- b) Providing documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from who the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incidents in question are bona fide incidents of abuse and the victim has signed or attested to the documentation; or
- c) Producing a Federal, State, tribal, territorial, or local police or court record.

At its discretion, the Authority may provide benefits to a victim of domestic violence, dating violence, sexual assault, or stalking based solely on the victim's statement or other corroborating evidence.

6. Consideration of mitigating circumstances does not guarantee that the applicant will qualify for admission.

CHAPTER 8. Verification Requirements

A. General Requirements

The verification requirements described in this section are applicable to initial screening for eligibility, initial certification, annual reexaminations and interim reexaminations.

1. The PHA will use up-front or written third-party verification of all information whenever possible. Family-reported income will be verified via HUD's Enterprise Income Verification System for the following:
 - a) New admissions
 - b) Annual reexamination
 - c) Interim reexamination
2. If there is a discrepancy between the family-reported income and the EIV family income report, the PHA will follow the written third party verification hierarchy to verify the family's income.
3. At least two documented attempts to obtain Third-Party Verification shall be made before the next level of verification is used. If up-front or third-party documentation is not available, the reason must be documented in the file.
4. Verified information not subject to change (such as a person's date and place of birth) need not be re-verified.
5. Information obtained that is subject to change and for which verifications are more than 60 calendar days old, should be re-verified.
6. HUD requires that verification forms to support PHA's admission decisions be placed in the applicant's (and subsequently, the tenant's) files.
7. Information that is subject to change, such as income, assets, family composition, etc. should be verified close to certification or reexamination.
8. The income determination for any fixed source of income, even if the family member with a fixed source of income also has a non-fixed source of income shall upon admission to the program, full reexamination and redetermination, be third-party verified every three (3) years.
9. Preferences must be verified once, prior to admission.

B. Verification Hierarchy as Mandated by HUD

Information will be verified in order through the Verification Hierarchy described briefly below. Should the highest level of verification techniques not contain any employment and income information for the family, the PHA will attempt the next lower level of verification technique and move down the hierarchy until an acceptable form of verification is obtained. At least two (2) documented attempts to obtain third-party verification shall be made at each level before the next level of verification is used. (Level 6 being the 'highest' form of acceptable verification and Level 1 being the 'last resort' method of acceptable verification).

1. Upfront Income Verification (UIV) (Level 6): The highest mandatory level of third party verification using HUD's Enterprise Income Verification (EIV) system.

NOTE: NOT AVAILABLE FOR INCOME VERIFICATION OF APPLICANT

2. Upfront Income Verification (UIV) (Level 5): The highest (optional) level of third party verification using non-HUD systems. Utilization of The Work Number (an automated verification system) and state government databases to validate tenant-reported income.
3. Written Third Party Verification (Level 4): The high level of third party verification mandated as follows:
 - a) Mandatory to supplement EIV-reported income sources;
 - b) Mandatory when EIV has no data;
 - c) Mandatory for non-EIV reported income sources;
 - d) Mandatory when tenant disputes EIV-reported employment and income information and is unable to provide acceptable documentation to support dispute.
4. Written Third Party Verification Form (Level 3): The Medium-Low level of third party verification mandated as follows:
 - a) Mandatory if third-party written verification documents are not available or rejected by the PHA;
 - b) Mandatory when the applicant or tenant is unable to provide acceptable documentation
5. Oral Third-Party (Level 2): The Low level of third party verification mandated as follows:
 - a) Mandatory if written third-party verification is not available.
 - b) The PHA may use telephone verifications.
6. Tenant Declaration (Level 1): The Low level of verification techniques. (Also known as Self Certification)
 - a) Used as a last resort when unable to obtain any type of third party verification.
 - b) The PHA will accept a notarized sworn statement (with penalty of perjury) from the Applicant as Tenant Declaration when no other form of verification is available.

The PHA will not delay the processing of an Applicant beyond fourteen (14) calendar days because a third-party information provider does not return the verification in a timely manner.

For Applicants, income verification may not be more than 60 calendar days old at the time of a unit offer. Income verifications are valid for 60 calendar days from the date of receipt.

Regardless of these timeframes, Criminal History Reports will be useable as a valid verification for no longer than 120 calendar days.

C. PHA Use of Enterprise Income Verification (EIV) System

In accordance with 24 CFR 5.236 and administrative guidance issued by HUD, the PHA will utilize HUD's Enterprise Income Verification System, in its entirety, as a third party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income.

The PHA shall obtain an 'Income Report' from the EIV System for each household. As required, the PHA shall maintain the Income Report in the resident file along with the Family Report (Form HUD-50058) and all documents used to support the income and rent determinations for all mandatory annual reexaminations of family income and composition.

If the Income Report does not contain any employment and income information for the family, the PHA shall attempt the next verification technique level and document why it moved to next lower level.

1. Use of EIV Data

EIV data is used by the PHA to validate tenant-reported income and supplement tenant-provided documents. Pursuant to HUD guidelines, the PHA shall use information for the sole purpose of determining eligibility and level of assistance for the public housing program.

Upon obtaining the EIV Income Report for the family, the PHA shall compare the EIV information to the tenant-reported information. If no discrepancy is found, the PHA shall calculate annual income using the tenant-provided documentation.

If there is a discrepancy between the EIV Income Report data and the tenant-reported income, i.e., income source not reported by tenant, substantial difference (\$2,400+ annually) in income reported, the PHA shall obtain additional information from the tenant and/or the third party source, if necessary.

The PHA shall use the most current and reliable documentation obtained to calculate annual income. EIV data shall not be used to calculate anticipated annual income (except as specified in HUD guidelines).

NOTE: EIV is not available for income verification of applicants or new admissions.

However, as mandated by HUD, the PHA will review the EIV Income Report for all new admissions within 120 days of the PIC submission date (PHA submission of Family Report [form HUD-50058] to HUD) to validate the family-reported income. Any discrepancy in income shall be resolved with the family within 60 days of the EIV Income Report date.

2. Tenant Dispute of EIV Data

When a tenant disputes the EIV Income Report data obtained by the PHA, the PHA shall request the tenant to provide acceptable documentation to support the information in dispute. If the tenant is unable to provide any form of acceptable documentation, the PHA will request written third party verification.

3. Dispute Reveals Incorrect EIV

a) Employment and Wage Information

Employment and wage information reported to EIV originates from the employer. The employer reports this information to the local State Workforce Agency (SWA). The SWA, in turn, reports the information to the HHS' National Directory of New Hires (NDNH) database.

If the tenant disputes the information the employer provided, it is the tenant's responsibility to contact the employer directly in writing to dispute the employment and/or wage information that the employer reported to the SWA. The tenant will be required to provide the PHA with a copy of the 'written dispute'. The 'written dispute' to the employer from the tenant should request the employer to correct the erroneous information. If employer resolution is not possible between the tenant and the employer, the tenant should contact the local State Workforce Agency for assistance.

If provided to the PHA, the copy of the tenant's correspondence to the employer that disputes the employment and/or wage information will be maintained in the tenant file.

b) Unemployment Benefit

Unemployment benefit information reported in EIV also originates from the local SWA and thus the tenant shall follow the same process as stated to dispute the information, if applicable. If provided to the PHA, the copy of the tenant's correspondence to the employer that disputes the unemployment benefit information will be maintained in the tenant file.

c) Social Security and Supplemental Security Income Benefit Information

Social Security (SS) and Social Supplemental (SSI) benefit information reported to EIV originates from the Social Security Administration (SSA). If the tenant disputes the information the SSA provided, it is the tenant's responsibility to contact the SSA at (800) 772-1213 or visit the local Social Security Administration Office.

d) Debts Owed to PHA's and Termination Information

Debts owed to PHAs and termination of tenancy information reported to EIV originates from the current or a former PHA. If the tenant disputes the information provided, it is the responsibility of the tenant to contact the PHA (who reported the information) in writing to dispute the information and provide any documentation that supports the dispute.

If the PHA determines that the disputed information is, in fact, incorrect, the PHA will update or delete the record from EIV.

Former tenants may dispute debt and termination information for a period of three years from the end of participation (EOP) date in the public housing program.

e) Identity Theft

If the tenant suspects identity theft, it is the responsibility of the tenant to:

- (1) Check their Social Security records;
- (2) File an identity theft complaint with the local police department;
- (3) File an identity theft complaint with the Federal Trade Commission; and
- (4) Monitor their credit reports with the three national credit reporting agencies (Equifax, TransUnion, and Experian).

The tenant will be required to provide the PHA with written documentation of the filed identity theft complaint.

f) Disclosure of EIV Information

The Federal Privacy Act (5 USC §552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the PHA will not share, will not provide a copy, and will not display the EIV data of an adult household member with another adult household member, unless the individual identified in the EIV data has provided written consent to disclose such information.

However, the PHA can elect to discuss with and show the head of household how the household's income and rent were determined based on the total family income reported to and verified by the PHA.

EIV information and any other information obtained by the PHA for the purpose of determining eligibility for the program may not and will not be disclosed to third parties for any reason, unless the tenant has authorized such disclosure in writing.

g) **Income Discrepancy Resolution**

In accordance with 24 CFR 5.236 the PHA will exercise the following in an attempt to resolve the discrepancy:

- (1) Discuss the income discrepancy with the tenant;
- (2) Request the tenant to provide documentation to confirm or dispute the unreported or underreported income;
- (3) If the tenant is unable to provide acceptable documentation, the PHA shall request 3rd party verification directly from the source.

If the additional documentation confirms that the family failed to report complete and accurate income information, the PHA will redetermine the tenant rent contribution retroactively as mandated by regulation. The family is required to repay the PHA for any retroactive amount owed due to the family's underreporting or failure to report income.

The tenant is required to pay the retroactive amount in full or enter into a repayment agreement with the PHA. If the tenant refuses to enter into a repayment agreement, the PHA shall terminate the family's assistance as required by regulation.

Amnesty programs are not permissible. A family terminated from the assistance program may not receive future rental assistance until the debt is repaid to the PHA.

D. Information to Be Verified

1. The PHA is required to verify information that is used to determine the family's eligibility and program compliance. The information to be verified includes, but is not limited to, the following:
 - a) Claims by an applicant or program participant that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking and that the incident in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the Violence Against Women Act. Such verification/certification shall include the name of the perpetrator.

Self-certification will be accepted via the approved certification form (HUD-91066) that the individual presenting it is a victim of domestic violence, dating violence, sexual assault, or stalking and the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the Violence Against Women Act. Such certification shall include the name of the perpetrator.

The individual shall provide such certification within fourteen (14) business days after the owner, manager, or PHA requested such certification. If the individual does not provide such certification within fourteen (14) business days after requested, admissions to the housing assistance program may be denied or the housing assistance may be terminated.

- b) Zero and/or sporadic income status of household. Zero and/or sporadic income applicants and participant will be required to complete a family expense form at each certification or recertification. The PHA will conduct an interim recertification every ninety (90) days for zero and/or sporadic income households.
- c) Full time student status including High School students who are eighteen (18) years of age or older;
- d) Current assets including assets disposed of for less than fair market value in the preceding two years;
- e) Child care expenses when it allows an adult family member to be employed; look for work, or further his/her education;
- f) Total medical expenses of all family members in households whose head, spouse, or co-head is elderly or disabled;
- g) Disability assistance expenses to include only those costs associated with attendant care or auxiliary apparatus that allow any adult family member, including the person with the disability, to be employed;
- h) Legal identity;
- i) U.S. citizenship/eligible immigration status;
- j) Social Security Numbers for all members in the household;
- k) Familial/Marital status when needed for head, spouse, or co-head definition;
- l) Disability for determination of allowances, deductions or requests for accommodation including need for a live-in aide;
- m) Time spent seeking employment when child care is claimed for the activity; and
- n) All sources of income.
- o) Preferences applicable to placement on and selection from the waiting list based on the selection preferences adopted by the PHA

E. Release of Information

As a condition of admission to, or continued occupancy of, any assisted unit, the PHA will require the family head and such other family members eighteen (18) years of age and older to execute a HUD-approved release and consent form authorizing any depository or private source of income, or any Federal, state or local agency, to furnish or to release to the PHA and to HUD such information as the PHA or HUD determines to be necessary. This includes a consent form for release of criminal/sex offender status information signed by each adult household member. The PHA will furnish applicants and participants a Release of Information/Privacy Act Notice [HUD-9886] when collecting information to verify income. Refusal to cooperate with the HUD prescribed verification process as outlined in this Plan and HUD regulations will result in denial of admission or termination of tenancy.

F. Authority to Obtain Criminal History Records

The PHA is authorized by 24 CFR part 5, subpart J to obtain criminal conviction records from a law enforcement agency and to use those records to screen applicants for admission to covered housing programs.

24 CFR part 5, subpart J, §5.905 states that a PHA that administers a Public Housing program must carry out background checks necessary to determine whether a member of a household applying for admission to any federally-assisted housing program is subject to a lifetime sex offender registration requirement under a State Sex Offender Registration program.

G. Permitted Use and Disclosure

1. The use and disclosure of criminal records/sex offender registration records received by the PHA may only be used for applicant screening and/or for termination of assistance. The PHA may disclose criminal conviction records as follows:

To officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to terminate assistance to a Public Housing participant on the basis of criminal activity/sex offender status as shown in criminal conviction records, the records may be disclosed to PHA employees performing functions related to the termination, or to the PHA hearing officer conducting an administrative grievance hearing concerning the proposed termination.

2. If the PHA obtains criminal records from a State or local agency showing that a household member has been convicted of a crime relevant to applicant screening or tenant lease enforcement or termination of assistance, the PHA must:
 - a) Notify the household of the proposed action based on the information obtained; and
 - b) Provide the subject of the record and the applicant/participant a copy of such information and an opportunity to dispute the accuracy and relevance of the information.

Note: This opportunity must be provided before a denial of admission, lease enforcement action or termination of assistance on the basis of such information.

3. Any other negligent or knowing action that is inconsistent with the statute or regulations. Conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 is the potential for:
 - a) Any person, including an officer, employee, or authorized representative of a PHA who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of the PHA under false pretenses; and
 - b) Any person, including an officer, employee, or authorized representative of a PHA who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.
 - c) A PHA may be liable under civil law to any applicant for, or participant of the PHA who is affected by either of the following:
 - d) A negligent or knowing disclosure of criminal records information obtained under statutory authority about such person by an officer, employee, or authorized

representative of a PHA if the disclosure is not authorized under the statute or regulations; or

- e) An applicant for, or assisted participant of the PHA may seek relief against the PHA for inappropriate disclosure by bringing a civil action for damages and such other relief as may be appropriate. The United States district court in which the applicant or participant resides, in which the unauthorized action occurred, or in which the officer, employee, or representative of a PHA alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fees and other litigation costs.

H. Receipt of Information from Law Enforcement Agencies

When the law enforcement agency/state registration entity receives the PHA's request, the agency must promptly release to the PHA a certified copy of criminal conviction records concerning the household member they have in their possession or under their control. National Crime Information Center (NCIC) records must be provided in accordance with NCIC procedures.

The law enforcement agency may charge a reasonable fee for this service but any fee charged by the agency for this service may not be passed on to the applicant.

I. Denial Based on Consumer Reporting Agency Criminal Reports

1. When the PHA obtains the criminal background report from a consumer reporting agency (CRA), provisions of the Fair Credit Reporting Act apply.
2. If a PHA denies/terminates assistance based in part on a report obtained from a CRA, the notice must include:
 - a) Name, address and telephone number of the CRA
 - b) A statement that the CRA did not make the decision to deny/terminate
 - c) Notice of the right to obtain a free copy of the report and dispute any information in the report

J. Records Management

1. The PHA has established and implemented a system of records management that ensures that records received from a law enforcement agency are:
 - a) Maintained confidentially;
 - b) Not misused or improperly disseminated;
 - c) Destroyed once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.
2. All information provided to an owner, manager, or PHA pursuant to VAWA, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, shall be retained in confidence by an owner, manager, or PHA, and shall neither be entered into any shared database nor be provided to any related entity, except to the extent that disclosure is requested or consented to in writing by the individual; required for use in an eviction proceeding of an abuser, stalker or perpetrator of domestic violence; or is otherwise required by applicable law.

3. The records management requirements do not apply to sex offender registration information that is public information or is obtained by the PHA other than from a State or local agency responsible for the collection or maintenance of such information.

K. Verifications through Drug Treatment Centers

The PHA does not request verification information directly from Drug Treatment Centers.

L. Verification of Income

1. All Income will be verified.
2. Gross Employment Income of all Household Members;
3. Social Security, Pensions, SSI and Disability Income;
4. Unemployment Compensation;
5. Welfare Payments or General Assistance;
6. Alimony or Child Support, Monetary or Not;
7. Net Income from a Business, Including Child care and Home Sales;
8. Recurring Monetary Contributions and Gifts;
9. Zero and/or Sporadic Income Status; or
10. Full-Time Student Status;

M. Verification of Fully Excluded Income (PIH Notice 2013-4)

1. When an income is fully excluded, the PHA is **not** required to:
 - a) Verify the income in accordance with the HUD-prescribed verification hierarchy;
 - b) Document in the tenant file why third party verification was not available; and
 - c) Report the income in Section 7 of the form HUD-50058.
2. The PHA may accept an applicant or participant's self-certification as verification of fully excluded income. The PHA's application and reexamination documentation, which is signed by all adult family members, may serve as the self-certification of the fully excluded income.
3. The PHA may elevate the verification requirements, on a case by case basis, to determine if a source of income qualifies for a full exclusion.
4. Examples of common fully excluded income categories that are verifiable through applicant or participant self-certification are:
 - a) Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps.
 - b) Income from a live-in aide.

N. Verification of Partially Excluded Income (PIH Notice 2013-4)

1. Income that is partially excluded means that only a certain portion of the income reported by the family qualifies to be excluded, while the remainder must be included when determining the family's annual income.

2. For partially excluded income, PHAs are required to:
 - a) Comply with HUD-prescribed verification requirements and all applicable regulations pertaining to the determination of annual income; and
 - b) Report the income in Section 7 of the form HUD-50058.
3. Examples of partially excluded income that are subject to regular verification requirements include:
 - a) Income subject to the 50% phase-in period of the Earned Income Disallowance
 - b) Earnings in excess of \$480 for full-time students 18 years old or older
4. To determine the amount of earnings to include in the calculation of the family's annual income, the PHA must verify the amount of employment income for these family members.

O. Assets and Income From Assets

Family members with assets are required to report all assets annually. The amount of interest earned on the assets will be included in the annual income used to calculate the Tenant rent. Where the family has net family assets in excess of \$5,000, annual income includes the greater of the actual income derived from assets or a percentage of the value of such assets based on the current passbook savings rate.

All assets to which any household member has access and income from assets will be verified. This may include but is not be limited to the following:

1. Checking Accounts
2. Current Savings Accounts and Certificates of Deposit of all household members;
3. Property Owned or Financed by Household Members;
4. Cash Value of Life Insurance Policies;
5. Retirement/Pension Funds; or
6. Assets Disposed of for Less than Fair Market Value in previous 24 months.

Families with assets less than \$5,000 typically generate minimal income from the assets which results in minor changes to the Tenant rent.

P. Verification of Deductions from Income

1. Child care Expenses

The PHA will verify:

- a) Eligibility for Child care Expenses;
- b) Reasonable Cost for Child care;
- c) A child care expense deduction is allowed when a family member requires child care to:
 - (1) Further his/her education, or
 - (2) Actively seek employment, or
 - (3) Be employed

Verification of child care expenses must validate the requirements of the child care deduction found in Chapter 9. G. 5 of this policy

2. Medical and Handicapped Assistance Expense

- a) IRS publication 502 will be used as guidance where questions arise as to an item's eligibility.
- b) Where an expense item can be treated as either a medical or a disability assistance expense the PHA will calculate the expenses both ways and give the family the greater deduction.
- c) The PHA will advise all families at each certification/recertification that they may report any one-time non-recurring medical or disability expense cost and request an interim recertification.
- d) Families who claim medical expenses or expenses to assist a person with disability will be required to submit a certification as to whether or not any expense payments have been, or will be, reimbursed by an outside source. Reimbursement of medical expenses must be reported on form HUD-50058.
- e) All expense claims will be verified by one or more of the methods listed below:
 - (1) Written third party verification by a doctor, hospital or clinic personnel, dentist, pharmacist, concerning anticipated medical costs to be incurred by the family and regular payments due on medical bills; and extent to which those expenses will be reimbursed by insurance or a government agency.
 - (2) Written third party confirmation by the insurance company or employer of health insurance premiums to be paid by the family.
 - (3) Written third party confirmation from the Social Security Administration of Medicare premiums to be paid by the family over the next twelve (12) months. A computer printout will be accepted.

3. Disability Assistance Expense Deduction

- a) Families are entitled to deduction for un-reimbursed expenses for care attendants and auxiliary apparatus expenses for a member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including member disabled) to work.
- b) The allowable disability assistance expense is that portion that exceeds three percent of annual income.
- c) This deduction may not exceed the earned income received by family members who are eighteen (18) or over, and who are able to work because of such attendant care or auxiliary apparatus.
- d) The PHA will verify:
 - (1) The disability;
 - (2) The un-reimbursed expenses for care or apparatus;
 - (3) Whether the expense is directly related to enabling employment; and
 - (4) Income earned due to the care or apparatus.

Q. Verifying Non-Financial Factors

Non-financial factors that must be verified include, but are not limited to:

1. Legal Identity;
2. Marital Status;
3. Familial Relationships;
4. Permanent Absence of Adult Member;
5. Change in Family Composition;
6. Disability;
7. Funds Owed the PHA or Other Housing Authorities;
8. Social Security Numbers

The PHA will require the applicant to provide Social Security Numbers for all household members or certify that no Social Security Number has been issued; or

9. Citizenship and Non-Eligible Immigration Status.

R. Verification of Local Preference

Verification of family/individual preferences shall be conducted at the time of selection from the waiting list. At the time of application, the preference claimed by the family is used to place them on the waiting list.

A family's preference status may change, thus voiding the original preference claimed. In that case, the family's placement on the waiting list may require adjustment based on their circumstances.

Similarly, a family originally having no preference status at the time of application may gain a preference while waiting that would change their placement on the waiting list.

The following methods may be used based upon the PHA's preference policies:

	Preference	Acceptable Forms of Verification
	Veteran: A family member being a veteran, spouse or surviving spouses or minor children of veterans	Discharge documentation
	Elderly/Disabled with the head of household being elderly or disabled	Birth Certificate
	Working/Unable to work adult family member that is: ▪ Currently enrolled in an employment training program ▪ Currently working at least twenty (20) hours per week	Employer verification of employment or offer of employment; Paycheck stubs with year-to-date earnings Educational institution verification of full-time student/trainee status; Statement from job training program

	▪ Attending school on a full-time basis ▪ Receiving income based on their inability to work	
	Victims of Domestic Violence	As long as the victim provides a HUD-approved certification form (Form HUD 50066: Certification of Domestic Violence, Dating Violence or Stalking), third-party documentation, a verbal statement, or other corroborating evidence, the victim is statutorily entitled to VAWA protections. A tenant's file should document acceptance of an individual's verbal statement. HUD has determined that an individual requesting protection cannot be required to provide third-party documentation. If a documentation request is made to an individual seeking protection under VAWA, the PHA, must accept the standard HUD certification form as a complete request for relief, without insisting on additional documentation. Additionally, third-party documentation must be accepted in lieu of the HUD standard certification form if such documentation is produced by the individual requesting relief.
	Displaced Households: ▪ Families displaced by city, state, or federal government action; or ▪ Families whose dwelling has been extensively damaged or destroyed as the result of a disaster formally recognized pursuant to Federal Disaster Relief Laws	Certification from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster or government action.

CHAPTER 9. Determination of Income and Rent Calculation

The PHA will not devise or implement income or rent determination, verification, or other related policies or procedures in a way that discriminates against persons on the basis of race color, national origin, sex, religion, familial status, and perceived or actual disability.

A. Annual Income

Annual income is used to determine whether the family is within the Income Limits applicable to the PHA's jurisdiction. Annual income is the anticipated amounts, monetary or not, that go to, or on behalf of, the family (including temporarily absent head, spouse or co-head), and are received from a source outside the family" within the twelve (12) months following certification.

- a) All income that is not specifically excluded by HUD regulations is counted.
- b) Adjusted income is the annual income minus HUD mandated deductions.
- c) Both annual and adjusted incomes are used to calculate the amount of rent. In calculating annual and adjusted income, the PHA must include the income of every member of the household, including those who are temporarily absent. Income of persons who are permanently absent from the household will not be counted.

B. Income Inclusions

1. Temporarily and Permanently Absent

HUD regulations specify that the income of family members who are "temporarily absent" from the household is to be included in total family income. The PHA has determined that "temporarily absent" is defined as an absence for up to one hundred eighty (180) days. An exception to the inclusion of that income is extended to members of the military and temporarily absent may exceed one year. Military absence can be confirmed with call-up orders. Other absences will be confirmed based on the circumstances of the absence.

Families must report in writing to the PHA any absence of the entire household from the unit of more than fourteen (14) consecutive days, consistent with the lease provisions. Families must report any family members who have been or are expected to be absent from the household for more than one hundred eighty (180) days. Any changes in family composition must be reported in writing to the PHA within ten (10) days. Families will be counseled at briefing sessions and re-certification on the effect family composition may have in determining unit size and Total Tenant Payment as well as the PHA's policies for dealing with such changes. At times, situations may arise that result in the temporary or permanent absence of a family member or members from the household. Such situations will be handled in the following manner:

a) Absence of children for foster care

In instances in which the children have been removed from the home by a social service agency, the agency will be contacted to determine the approximate length of time the children are expected to be away from the home.

- (1) If the agency indicates that the children are expected to return to the home at some point during the next twelve (12) months, the children will remain a part of the family composition and will be counted in determining the family's unit size.

- (2) If the children are not ever expected to be returned to the home, the children will be removed from the family composition and the family's unit size may be reduced accordingly.
- (3) If the agency indicates that it is unknown whether the children will be returned to the home, the children will remain a part of the family composition.

Oral conversations with the social service agency must be thoroughly documented in the family file, including the date of contact, name and title of contact person, name of agency, and telephone number and the details of the conversation.

b) Absence of single parent; use of caretaker adult

When a single parent leaves the household for an extended period as a result of imprisonment, hospitalization, military service, etc., and another adult approved by the PHA moves into the home to care for the children, the rental assistance will not be terminated. The family composition will be modified to include the name of the caretaker as head of household. The caretaker's income will not be included in the family income. The single parent's name shall be temporarily removed and the file documented to explain the circumstances. When the parent returns to the unit, the caretaker may leave or remain in the household. If the caretaker remains, his/her income will be included in the calculation of family income.

c) Absence of head of household, spouse or co-head due to military service or school

If the head of household, spouse or co-head is absent from the home to serve in the military or attend school, the individual will be considered temporarily absent and the income will be included in the calculation of family income. However, income received as a result of special hazardous duty pay when exposed to hostile fire will not be included.

d) Absence of other family member due to military service or school

If a family member other than the head of household, spouse or co-head is absent from the home to serve in the military or attend school, the family has the option of considering the person permanently absent (income not counted; not on lease) or temporarily absent (income counted; on lease). Income received as a result of imminent danger pay when exposed to hostile fire will not be included.

e) Absence due to hospitalization of sole member

When the family consists of only one member and that person leaves the home to go into a hospital or nursing home for a period of more than six (6) months, the assistance will be terminated. If a responsible medical professional verifies prior to the expiration that the confinement will be permanent, the PHA will terminate the assistance.

If a medical source documents that a family member who is residing in a nursing facility or hospital is expected to return to the unit in 180 days or less, the person shall be considered temporarily absent. If the person does not return to live in the unit within 180 days, the individual will be considered permanently absent.

f) Absence of All Household Members

If all members of the household are absent for thirty (30) consecutive days, but have not moved from the unit, assistance will be terminated. In order to determine if the family is absent from the unit, the PHA may write letters to the family at the unit, telephone the family at the unit, interview neighbors, and/or verify if utilities are in

service. In cases in which the family has moved from the unit, assistance will be terminated in accordance with the PHA's termination and eviction policies.

g) Adult visitors

An adult may visit a unit for no more than fourteen (14) cumulative days per year. Exceptions may be granted by the PHA if the visitor is providing care for a household member with a long-term illness. Adults exceeding this limit must be approved by the PHA before being considered a family member and added to the lease. Addition of such person may not be approved if they cannot be accommodated within the existing occupancy limits for the unit.

h) Child visitors

Children under the age of eighteen (18) may visit a unit for a maximum of thirty (30) cumulative days per year without being considered part of the family, provided the family has the written permission of the PHA.

i) Joint Custody of Children

Children who are subject to a joint custody agreement but live in the unit at least fifty-one percent (51%) of the time will be considered members of the household. The PHA defines 51% of the year as 186 days. If the family includes a child who is temporarily absent from the home due to foster care, the standards in paragraph "a" above will be used.

2. Earned Income

Earnings anticipated to be received in the twelve (12) months following the effective date of the certification will be annualized. To annualize income, the PHA will multiply:

- a) Hourly income by the number of hours worked in a year;
- b) Weekly income by 52 weeks, unless it is verified that less weeks will be worked;
- c) Bi-weekly income by 26 pay-periods;
- d) Semi-monthly by 24 pay-periods; and
- e) Monthly by 12 pay-periods.

Where income is seasonal or fluctuates as to hours or rates, such as for teachers, construction workers, farmers or migrant workers, the PHA will use an average for twelve (12) months based on past income history of the family and such anticipated income that can be verified.

3. Temporary or Sporadic Income

Temporary or sporadic income is not counted in determination of annual income. Employment lasting less than thirty (30) days will be considered temporary. Sporadic income includes amounts that are neither reliable nor periodic. The PHA will average amounts of recurring sporadic or temporary income in an effort to present the most accurate calculation of annual income.

4. Cyclical or Seasonal Work

When income varies due to cyclical or seasonal work, and the source of income has not changed from the previous year, the PHA may rely on the previous year's income to anticipate income for the coming year. Increases in pay rate over that of the previous year would be considered.

When anticipated income cannot be determined for a full twelve (12)-month period, the PHA will annualize current income and conduct an interim reexamination when income changes.

5. Net Income from Business or from Self-Employment

The net income from the operation of a business or self-employment is counted as income. Net income is the amount of business income received less expenses incurred. Deductions from business income can include business vehicle expenses, supplies and materials, staff salary and benefits, depreciation of assets. Any withdrawals of cash from the business will be considered income unless the withdrawal is reimbursements of cash or assets invested in the operation by the family. Expenditures for expansion or amortization of capital indebtedness are not used as deductions from income.

Business expansion includes substantially increasing the size of the business or branching out into adjacent areas that are not part of the original operation. Straight-line depreciation of assets is an allowable expense and can be verified through examination of the income tax forms filed for the business or audited financial statements. Similarly, the accounting records and financial statements can be used to determine the initial/ongoing cash or assets invested in the business. This information can be used to determine whether or not a withdrawal is a reimbursement of investments in the business. If a business is co-owned by someone outside the household, audited financial statements and income tax returns can provide information to determine the level of net income to be attributed to the family from part ownership of the business.

6. Regular Contributions and Gifts

The PHA has determined that a regular contribution is one that is made weekly or monthly for at least seven months within a twelve (12) month period. Contribution/gift values will be determined by verifying with the giver, the amount, type and frequency of the contributions. For example, the average cost of regular donations of groceries or clothing to the family will be counted in family income. Also, where specific bills are paid such as telephone, gas, electric, cable, rent, etc., verification of billed amounts will be sought from the providers.

Payments made by persons or entities (such as insurance company reimbursement for doctor bills or prescriptions) specifically for medical expenses will be excluded from income. Verification of the amount paid will be secured directly from the provider and third-party verification will be secured from the recipient. Any discrepancy between the amount paid and the amount due, or credit to the family will be counted as income unless it is determined that the amount is a one-time contribution.

7. Alimony and Child Support

The full amount of alimony and child support payments is included in the calculation of annual income. Verification of the amounts can be found in the final divorce decree or settlement papers or may be obtained from the court if payments are made to and distributed by the court. If the family asserts that they are not receiving the full amounts due, the family must present documentation of collection efforts or other satisfactory documentation that verifies the funds are not paid in full. If the payee has filed a claim in court for non-payment or under-payment, the PHA may use those documents for verification. Until the PHA obtains verification of the lesser amount, the full amount of alimony and child support payments will be included in income.

In cases where there is no award by the court, the PHA must seek verification from the provider of the amounts paid, view canceled checks or money order receipts and, for alimony, the provider's income tax returns, if available. Information from the provider will be matched against records provided by the payee including tax returns, if any, and any discrepancies reconciled to assure an accurate amount to include in annual income.

8. Lump Sum Payments

Lump-sum payments received due to delayed start of periodic payments (e.g., unemployment, TANF, or child support) except Social Security and Supplemental Security Income benefits, whether due to disputes or processing problems are counted as income.

Attorney fees may be deducted from lump-sum payments when the services were necessary to recover the lump-sum settlement and when the recovery does not include additional monies to pay the attorney fees.

Social Security and Supplemental Security Income benefits that are received in a lump sum or prospective monthly amounts are excluded from annual income. The lump sum payment may be treated as an asset.

9. Income from Assets

Where the family has net family assets in excess of \$5,000, annual income includes the greater of the actual income derived from assets or a percentage of the value of such assets based on the current passbook savings rate.

a) Assets Valued Under \$5,000

When assets owned by any family member (including minors) have a combined cash value of less than \$5,000, actual income received from the asset(s) is counted as income. (For example, checking and savings accounts.) In determining the value of checking accounts the PHA will use the lesser of the current balance or the average daily balance of the account for the most recent past three (3) months. Anticipated interest will be determined by multiplying the value of the checking account by the annual interest rate.

b) Assets Valued Over \$5,000

When assets owned by any family member (including minors) have a combined cash value of more than \$5,000, the PHA will use the greater of actual income received from the asset(s) or imputed income using the passbook rate as determined by the PHA.

c) Assets Disposed of for Less than Fair Market Value

The PHA will count as an asset the difference between the market value and the actual amount received for assets disposed of for less than market value for two (2) years from date of disposition. If all assets total more than \$5,000, the PHA will use the greater of actual income received from the asset(s) or imputed income using the passbook rate as determined by the PHA.

d) Contributions to Retirement Funds

While an individual is employed, only the amount the family can withdraw without retiring or terminating employment is included as an asset. After retirement or

termination of employment, any amount the employee elects to receive as a lump sum is included in income.

e) Passbook Rate Calculation

PHA Determination of the Passbook Rate: The PHA will use the actual Savings National Rate that is in effect on the first day of the PHA's fiscal year. The PHA will review the Savings National Rate annually and adjust it accordingly on the first day of the PHA's fiscal year. Current and historical Savings National Rates may be accessed at www.fdic.gov/regulations/resources/rates/ .

10. Military (Armed Forces) Pay

The Military Pay of the head of household, spouse or co-head is included in annual income. All regular pay, special pay and allowances of member of the military will be included in income (EXCEPTION: Special hazardous duty pay for a family member exposed to hostile fire.)

11. Public Assistance

a) Public assistance includes:

- (1) Temporary Assistance to Needy Families (TANF); and
- (2) General Assistance.

b) Special calculations must be made for benefits received in "as paid" state or local programs.

"As paid" programs are those in which the family receives a specific amount for shelter and utilities and the amount is adjusted based upon the actual amount the family pays for shelter and utilities.

c) In "as paid" programs, the amount of welfare assistance income shall consist of:

- (1) The amount of the grant exclusive of the amount specifically designated for shelter and utilities; plus
- (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount counted, as income is the actual amount received.

12. Imputed Welfare Income

The PHA will not reduce a family's contribution if the family's welfare benefits are reduced due to:

- a) Welfare fraud; or
- b) Failure to fulfill the Welfare Department's economic self-sufficiency or work requirements.

Imputed Welfare income must be calculated if the Welfare Agency verifies in writing that a family has been sanctioned for one of the two reasons above. Under these circumstances, the PHA will not reduce the total tenant payment for the family. The amount of the sanction in welfare benefits is identified as imputed welfare income. The amount of

the imputed welfare income plus other income received by the family is used to calculate the total tenant payment.

When new income to the household exceeds the imputed welfare income, the imputed welfare income is no longer considered in the determination of annual income.

The family will be offered an opportunity for an informal hearing. The PHA will determine through third-party written verification why the benefits were reduced or suspended before adjusting the income and rent. If welfare benefits expired and program requirements were met, the family income will be reduced to determine rent.

13. Payments in Lieu of Earnings

When payments in lieu of earnings cannot be anticipated for the twelve (12) months following examination, annualize the payments in lieu of earnings and conduct an interim recertification when income changes.

This may include:

- a) Unemployment;
- b) Disability Compensation (unless it is a lump sum payment);
- c) Worker's Compensation (unless it is a lump sum payment); and
- d) Severance Pay (unless it is a lump sum payment).

Lump-sum health and accident insurance payments and Workers' Compensation benefits are not counted as income.

14. Periodic Payments and Allowances

The full amount of periodic amounts received from:

- a) Social Security;
- b) Supplemental Security Income;
- c) Annuities;
- d) Insurance Policies;
- e) Retirement Funds;
- f) Pensions;
- g) Disability or Death Benefits;
- h) Alimony or Spousal Support;
- i) Child Support;
- j) Other Types of Periodic Receipts.

The withdrawal of cash from an investment that is received as periodic payments (i.e. 401K, IRA) should be counted as income unless the family can document and the PHA verifies that amounts withdrawn are reimbursement of amounts invested. When a family makes a withdrawal from an account in which it has made an investment (such as an annuity or IRA), the withdrawals count as income only after the amount invested has been totally paid out.

If benefits (such as Social Security or Veteran's benefits) are reduced due to a prior overpayment, use the actual amount of the current allocation (before withholding for medical premiums).

If benefits are reduced due to other withholding, such as an IRS garnishment or child support garnishment, use the full award amount.

15. Income of Dependents

A dependent is a family member who is under 18 years of age, is disabled (regardless of age), or is a full-time student (regardless of age). The head of household, spouse or co-head, foster-child, or live-in aide are never dependents.

- a) Benefits and non-earned income of minors are counted in determining annual income. Earned income of minors is not counted.
- b) Count only the first \$480 of earned income of full-time students age 18 and older who are not the head of household, spouse or co-head.
- c) Count all non-earned income of full-time students.
- d) Count all income (earned and non-earned) of the head of household, spouse or co-head, even if he/she is a full-time student or a minor.

16. Income of Student of Higher Education

- a) Include only the first \$480 of earnings for full time students other than the Head of Household, Spouse, Co-head, or foster children
- b) Include the gross earnings of a student of higher education who is Head of Household, Spouse, or Co-head
- c) Include all other unearned income (except that which is excluded by federal regulation) of students of higher education.
- d) The full amount of student financial assistance paid directly to the student or educational institution is excluded. Student Work Study income is considered to be financial assistance and therefore excluded.

17. Financial Assistance to Single Eligible Students of Higher Education

Financial assistance, in excess of amounts received for tuition and any other required fees and charges (e.g., athletic and academic scholarships) that an individual student receives under the Higher Education Act of 1965 (20 U.S.C. 1002) shall be excluded from annual income for that individual.

18. Income of a Live-in Aide

The income of a live-in aide is excluded from income provided that the person meets the live-in aide criteria established by HUD.

A live-in aide is a person who resides with one or more elderly or near elderly persons or persons with a disability and who:

- a) Is determined to be essential to the care and well-being of the persons;
- b) Is not obligated for the support of the persons; and
- c) Would not be living in the unit except to provide the necessary supportive services.

This definition does not automatically exclude relatives. Adult sons, daughters or other relatives could qualify as a live-in aide and have their income excluded if they demonstrated that they otherwise would be living elsewhere. Verification would involve a determination regarding whether the person previously lived outside the unit and moved back solely to take care of the family member, or hasn't resided in the unit for at least three months. However, husbands or wives may provide attendant care for spouses but would not qualify as a live-in aide and have their income excluded since they would be living in the unit and are legally responsible for support.

Verification of the need for live-in aide services should be obtained from qualified medical, health or social services/rehabilitation specialists. Verification of a legal requirement for support includes marriage certificates, court ordered guardianship, or other legal documents requiring the attendant to be legally responsible for support of the person they care for. The PHA will verify residency of the attendant as being elsewhere through prior landlords, rental agreements or leases, rental receipts, utility bills in the attendant's name for another address, driver's license or other government issued ID, etc.

Live-in aides are not remaining members of a resident family and must vacate the unit if the person they care for vacates. Also, live-in attendants should have their own bedroom and may have family members live with them provided that the presence of the live-in aide's family does not cause over-crowding. Regulations prevent the PHA from providing additional bedrooms for live-in aides family members.

C. Averaging Income

There are two ways to calculate income when the income cannot reasonably be anticipated for a full year:

- a) Annualize current income (and subsequently conduct an interim reexamination if income changes); or
- b) Average known sources of variable income to estimate an annual income (no interim adjustment is required if income remains as predicted).

Income from the previous year may be analyzed to determine the amount of anticipated income when future income cannot be clearly verified. If, by averaging, a reasonable estimate can be made, that estimate will be used to anticipate annual income over the next twelve (12) months, instead of changing the rent every month as the income fluctuates.

D. Federally Mandated Income Exclusions

Some amounts are prohibited from being included in a family's income for rent determination purposes. These amounts, called exclusions, are not part of Annual Income. See Section VIII: Verifications for verification and reporting requirements related to Fully Excluded and Partially Excluded Income.

1. Wages of Family Members under Age 18

The full amount of income from employment of children (including foster children) under the age of 18 (excluding the head of household, spouse of head of household, or co-head).

2. Earnings in Excess of \$480 for Full-Time Students Over Age 18 (except Head of Household, spouse or co-head)

The first \$480 of earned income of each full-time student 18 years old or older (excluding the Head of Household, spouse or co-head) earned is counted in calculation of Annual Income.

3. Refunds or Rebates of Property Tax on Home

Amounts received by a family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit are excluded in the calculation of Annual Income.

4. Payments for Student Financial Assistance Paid Directly to the Student or Educational Institution

The full amount of financial assistance, including grants, scholarships, educational entitlements, work-study programs and financial aid packages, are excluded in the calculation of Annual Income. (Although not counted toward annual income the PHA shall record grants, scholarships and student financial aid on Form HUD-50058 and show as excluded.)

5. Lump-Sum Additions to Family Assets

Lump-sum additions to family assets, such as inheritances, health and accident insurance, worker's compensation, capital gains and settlements for personal or property losses are excluded in the calculation of Annual Income.

6. Lump-Sum Payments of Deferred Benefits

Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts are excluded in the calculation of Annual Income.

7. Amounts Set Aside for Use under PASS

Amounts received by a person with a disability that are disregarded for a limited time for purposes of SSI eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) are excluded in the calculation of Annual Income.

8. Temporary, Non-Recurring, Sporadic Income

Temporary, non-recurring or sporadic income (including gifts) is excluded in the calculation of Annual Income.

Sporadic income is that which is not of a regular nature and which cannot be counted on continuing.

9. Medical Expenses

Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member are excluded in the calculation of Annual Income.

10. Income of Live-In Aides

All income of a live-in aide is excluded in determining annual income.

11. Adoption Assistance Payments in Excess of \$480 per Child

Count as Annual Income the first \$480 per child of adoption assistance payments.

12. Payments to Keep Developmentally Disabled Family Members at Home

An amount paid by a State or local agency to a family with a member who has a developmental disability living at home is excluded in the calculation of Annual Income.

13. Payments Received for the Care of Foster Children or Adults

Payments received for the care of foster children or foster adults are excluded in the calculation of Annual Income. Foster Adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone.

14. Armed Forces Hostile Fire Pay

The special pay to a family member serving in the Armed Forces who is exposed to hostile fire is excluded in the calculation of Annual Income. All other pay to household members who are serving in the Armed Forces is included in income.

15. Foreign Government Reparation Payments

Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era are excluded in the calculation of Annual Income.

16. Earnings and Benefits from Employment Training Programs Funded by HUD

Training programs funded by HUD will have goals and objectives. This is not to be confused with employment by the PHA.

17. Incremental Earnings and Benefits from Participation in Qualifying State and Local Employment Programs

Incremental earnings and benefits received by any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded in the calculation of Annual Income.

A qualified training program is one that is part of a State or local employment-training program and has clear goals and objectives. This would include programs that have the goal of assisting participants in obtaining employment skills, and are authorized or funded by Federal, State or local law, or operated by a public agency. These include programs through Department of Labor, Employment Training Administration, and Welfare-to-Work Grants.

Amounts excluded by this provision are excluded only for the period during which the family member participates in the employment-training program.

18. Reimbursement for Out of Pocket Expenses While Attending a Public Assisted Training Program

Amounts received by participants in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program are excluded in the calculation of Annual Income.

19. Resident Service Stipend not to Exceed \$200 per Month for Services to the PHA

Amount received under a resident service stipend are excluded in the calculation of Annual Income.

A resident service stipend is a modest amount, not to exceed \$200 per month, received by a resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, ground maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board.

No resident may receive more than one such stipend during the same period of time.

The Public Housing Reform Act provides that the governing board of a PHA must generally contain at least one member who is directly assisted by the PHA. To support and facilitate implementation of this new statutory requirement, HUD has clarified that the resident service stipend exclusion covers amounts received by residents who serve on the PHA governing board.

20. The value of the allotment provided to an individual under the Food Stamp Act.

21. Payments to volunteers under the Domestic Volunteer Services Act which includes, but is not limited to:

- a) RSVP;
- b) Foster Grandparents;
- c) Senior Companion Program;
- d) VISTA;
- e) Peace Corps;
- f) Service Learning Program;
- g) Special Volunteer Programs;
- h) Small Business Administration programs such as National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience;
- i) Service Corps of Retired Executives (SCORE); or
- j) Active Corps of Executives.

22. Payments received under the Alaska Native Claims Settlement Act.

23. Income derived from certain sub-marginal land of the U.S. that is held in trust for certain Indian tribes.

24. Payments or allowances under Department of Health and Human Services Low-Income Home Energy Assistance Program (LIHEAP).

25. Income derived from the disposition of funds of the Grand River Band of the Ottawa Indians.

26. The first \$2000 of per capita shares from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court the interests of individual Indians in trust or restricted

lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands.

27. The full amount of Federal scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work study programs or under the Bureau of Indian Affairs student assistance program.
28. Payments received from programs funded under Title V of the Older Americans Act of 1965 which includes, but is not limited to:
 1. Senior Community Services Employment Program;
 2. National Caucus Center on the Black Aged;
 3. National Urban League;
 4. Association National Pro Personas Mayors;
 5. National Council on Senior Citizens; or
 6. Green Thumb.
29. Payments received on or after January 1, 1989 from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the Agent Orange product liability legislation.
30. Payments received under the Maine Indian Claims Settlement Act of 1980.
31. The value of any child care provided or arranged (or any amount received as payment for such care) or reimbursement for costs incurred for such care under the Child Care and Development Block Grant Act of 1990.
32. Earned Income Tax Credit refund payment.
33. Payments by the Indian Claims Commission to the Confederate Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation.
34. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990.
35. Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).
36. Any amount of crime victim compensation that the applicant (under the Victims of Crime Act) receives through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant.
37. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998.
38. An amount earned by temporary Census employees for determining income in the Department's assisted housing programs. Terms of employment may not exceed 180 days for the purposes of the exclusion.
39. Amounts received under Section 1780 of the School Lunch Act and the Child Nutrition Act of 1966, including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

40. Payments, funds, or distributions authorized, established or directed by Section 8 of the Seneca Nation Settlement Act of 1990.
41. Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definitional of annual income in the U.S. Housing Act of 1937 by Section 2608 of the Housing and Economic Recovery Act of 2008.
42. Compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010.
43. A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, as provided in the Claims Resolution Act of 2010 for a period of one year from the time of receipt of that payment.
44. Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002.
45. Kin-Gap Payments that go to, or on behalf of children leaving the juvenile court system to live with a relative or legal guardian.
46. Kinship Payments that go to, or on behalf of children living with a relative or legal guardian

E. Earned Income Disallowance Self-Sufficiency Incentive (EID)

This disallowance of an increase in earned income only applies to families currently residing in public housing. A family cannot qualify for the EID at the time of admission. In order to qualify, the family is one:

1. Whose annual income increases as a result of employment of an adult family member who was previously unemployed for one or more years prior to the employment;

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage. The established minimum wage means the federal minimum wage unless there is a higher state or local minimum wage.

2. Whose annual income increases as a result of increased earnings by an adult family member during participation in any economic self-sufficiency or other job training program; or
3. Whose annual income increases, as a result of new employment or increased earnings of an adult family member, during or within six (6) months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act. The TANF program includes formula-driven maintenance assistance and such benefits and services as one-time payments; wage subsidies and transportation assistance-provided that the total amount over a six (6)-month period is at least \$500.

Note: Receipt of Food Stamps and/or Medicaid is not part of the TANF program. If no TANF assistance is provided as listed above, the family will not qualify for the earned income disallowance under TANF provisions but may qualify under the remaining criteria. The PHA will verify receipt of benefit or services other than monthly maintenance with the

TANF provider if the family indicates that their eligibility for the earned income disallowance is based on other assistance under TANF.

d) Maximum 24-Month Disallowance

The disallowance of increased earned income of an individual family member is limited to a lifetime 24-month period. It applies to a maximum of 12 months for disallowance of 100% and a maximum of 12 months for disallowance of 50% during the 24-month period starting from the initial exclusion. At the end of the 24-months, EID ends regardless of how many months were "used."

e) Disallowance of Increased in Annual Income

Initial 12-month exclusion: During the 12-month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

Phase-in of rent increase: Upon the expiration of the 12-month period the PHA must exclude from the annual income of a qualified family at least 50 percent (50%) of any increase in income of such family member as a result of employment over the family member's baseline income.

f) Effect of Changes on Currently Participating Families

Families eligible for and participating in EID prior to May 9, 2016 will continue to be eligible for the lifetime 48-month period.

F. Assets

Family members with assets are required to report all assets annually. The PHA will determine the net cash value of each asset by deducting reasonable costs that would be incurred to convert the asset to cash from the market or face value of the asset.

Reasonable costs include, but are not limited to: penalties for early withdrawal of funds from CD's, Money Market accounts, IRAs, annuities, etc.; the cost basis plus commissions and fees for stocks, bonds and other capital investments; appraisal fees, realtor commissions, closing costs, repair costs, if applicable, for real property; penalty fees for early withdrawal of IRA's, pensions and annuities.

If assets are held jointly in an "and" or an "or" account, the full value of the asset less any reasonable costs will be counted unless the family member can demonstrate that their access to the account is legally restricted. The PHA must be able to verify the restriction.

Necessary items of personal property are not counted as assets. These include but are not limited to: clothing; furniture, personal automobiles, computers and related equipment for personal but not business use.

Assets include, but are not limited to trusts (only if a family member has access or control of the trust), joint accounts, investments, CDs, IRAs, Keogh, real or personal property or other annuities to which the family member has access even if penalties would be imposed for early withdrawal.

In determining the net cash value of assets, the PHA will treat assets as follows:

1. Trusts

Principal from a trust is not counted as an asset if the trust is not revocable by, or under the control of, any member of the family, so long as the fund continues to be held in trust. The distributions are considered to be part of annual income. A lump sum distribution in total or in part will be added to all other income and divided by twelve (12) to obtain the gross monthly income. Verification of trust provisions should be contained in the original trust documents. If the documents cannot be obtained, verification should be obtained from the trustee (individual or financial institution).

If a family sets up an irrevocable trust for the benefit of another person outside of the household, the PHA must determine whether or not the value of the trust is less than the fair market value of the assets contained therein had the family retained the asset. If that is the case, the fair market value less reasonable costs must be determined and the net value of the asset included in total assets. Any income the family receives from this trust will be included in annual income. Nominal amounts set aside in trust for or donated to charitable organizations up to \$1000.00 will not be considered assets disposed of for less than fair market value.

2. Joint Ownership

For joint ownership of assets, the PHA must determine the percentage of ownership attributable to the family member. Documents that may provide this information include deeds, tax returns, ownership papers, and financial institution records. These types of documents should, if applicable to the asset, describe whether the family member has full or restricted access to the asset. If restricted, the PHA will use only that portion of the asset available to the family member.

3. Investments

The PHA will use the balance from the most recent statement or report and subtract all costs for converting the investment to cash in order to determine the cash value of investments. Income from investment accounts will be based on the rate of return. Whenever the PHA cannot determine an anticipated rate of return, use the earnings shown on the most recent statement or report as the basis for calculation.

4. Retirement Benefits (CDs, IRAs, Keogh)

Retirement/pension accounts, while the household member is employed, are counted as assets only if there is access to cash from the account while employed. Similarly, if funds are held in the account with the principal restricted from access, only distributions from the fund are counted as income.

5. Checking and Savings Accounts

Checking and savings accounts are also considered as assets. The total amount in savings will be considered an asset unless the account is specifically designated under a plan for self-sufficiency for a person with a disability under Social Security Administration guidelines. Checking accounts are also assets under HUD guidelines; however, since most checking accounts are used primarily as a pass-through for receipt of income and payment of monthly household expenses, only the amount in the checking account in excess of \$1000.00 will be considered to be an asset. The PHA may grant an exception to this threshold if the family states and the PHA can verify that regular household expenses such as rent, utilities, food, etc., exceed that threshold. Bank statements for at

least six (6) consecutive months will be requested for checking accounts. The cash value will be based on an average of the closing balances of the statements. The PHA will use the closing balance of the most recent statement to determine the cash value of savings accounts. For threshold exceptions, original billings, rental receipts and related documents will be required.

Note: The interest from an interest bearing checking account is considered as income.

6. Annuities

Annuities may provide for either fixed or variable payment. For variable payments, the PHA will evaluate historical information to determine the approximate anticipated payment amount for the next twelve (12) month period. This annualized income may be adjusted based on significant changes from the anticipated income. The holder of an annuity may withdraw the funds at any time before maturity but will pay a penalty for early withdrawal. Verification of the penalty amount may be obtained from the company holding the annuity and should be deducted from the total distribution before determining asset or income amounts. Monthly or periodic regular annuity payments are counted, as income while the principal of the annuity remains an asset until fully liquidated. Verification of any annuity expenses will be obtained from the annuity provider.

7. Net Cash Value of Assets Disposed of for Less than Fair Market Value for 2 Years from Date of Disposition

Reasonable costs include, but are not limited to: penalties for early withdrawal of funds from CD's, Money Market accounts, IRAs, annuities, etc.; the cost basis plus commissions and fees for stocks, bonds and other capital investments; appraisal fees, realtor commissions, closing costs, repair costs, if applicable, for real property; penalty fees for early withdrawal of IRA's, pensions and annuities.

If assets are held jointly in an "and" or an "or" account, the full value of the asset less any reasonable costs will be counted unless the family member can demonstrate that their access to the account is legally restricted. The PHA must be able to verify the restriction.

Not counted, as assets are necessary items of personal property. These include but are not limited to: clothing; furniture, personal automobiles, computers and related equipment for personal but not business use.

8. Lump Sum Additions

Lump sum additions such as inheritances, insurance payments (including payments under health and accident insurance and Workers' Compensation, except those portions which are reimbursement for expenses paid out by the family or otherwise excluded by HUD regulation), capital gains and settlement for personal or property losses are counted as assets whether or not they are placed in savings or other investment vehicles. The PHA will verify payments of inheritances through the executor; health, accident and Workers' Compensation payments through the provider; capital gains through the broker, original 1099s or tax returns; and settlements for personal or property losses through the insurer.

Lump sum payments of \$500 or less will not be included in the calculation of assets.

G. HUD Required Deductions

HUD has five (5) mandatory deductions from annual income:

1. Dependent Allowance

\$480 each for family members (other than the head, spouse or co-head) who are minors (including children who are adopted), and for family members who are eighteen (18) and older who are full-time students or who are disabled (foster children, foster adults, and children of live-in aides are not entitled to this deduction).

2. Elderly/Disabled Allowance

\$400 per family for families whose head, spouse or co-head is 62 or over or disabled.

3. Allowable Medical Expenses

Deducted for all family members of an eligible elderly/disabled family.

a) IRS publication 502 will be used as guidance where questions arise as to an item's eligibility. This publication provides a complete listing and description of allowable medical and dental expenses that can be included as medical deductions. Where an expense item can be treated as either a medical or a disability assistance expense the PHA will calculate the expenses both ways and give the family the greater deduction.

b) The PHA will advise all families at each certification and each reexamination that they may report any one-time nonrecurring medical or disability expense cost and request an interim recertification.

c) The PHA will include the following as a standard medical expense deduction when determining the family's medical expenses deduction:

(1) The amount of un-reimbursed out-of-pocket expenses for prescription drugs

(2) Any premiums incurred for a Medicare prescription drug plan

d) Standard medical deduction is the sum of allowable medical deductions that exceed three percent (3%) percent of annual income.

4. Allowable Disability Assistance Expenses

Deducted for attendant care or auxiliary apparatus for persons with disabilities if needed to enable the disabled person or another adult family member to work.

Disability assistance expenses are those reasonable expenses that are anticipated during the period for which annual income is computed for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled family member) to be employed.

These expenses may not be paid to a member of the family nor reimbursed by an outside source.

The PHA must determine what is "reasonable" based on local conditions and costs as well as whether the expenses are directly linked to enabling the family member to work. Reasonable attendant care costs for the locality should be verified through a local social

services agency which handles attendant care needs, or an independent Living Center that assists families in matching attendants with disabled clients.

Attendant care includes the actual cost of providing an attendant to care for a disabled person either in the home or in the work place based on local standards for hourly pay or salary.

Equipment may include but not be limited to providing a wheelchair (manual or electric) to allow the disabled individual the mobility to go from home to place of employment or to facilitate care in the home, ramps to provide access to and from the unit, modifications to a vehicle or special equipment to enable a blind individual to read or type, but only if this enables the disabled person or other family member to work, any other type of special equipment needed for mobility if the use thereof is demonstrated to be employment related for the disabled person or another family member.

The amount allowed is limited to the amount that exceeds three percent (3%) of gross family income and does not exceed the amount earned as a result of the expense.

The PHA must be able to verify that there is a direct link between the disability assistance expenses claimed by the family and a family member's (including the disabled family member) employment.

If more than one family member is enabled to work as a result of the incurring of disability assistance expenses, the PHA will verify the employment and combine the incomes of all working family members to establish the cap by which the expenditures are limited.

If both child care and disability expenses are needed to enable a person to work, the PHA will use the same employment income to justify the child care allowance and the disability assistance allowance.

5. Child Care Expenses

Deducted for the care of children, including foster children, under thirteen (13) years of age when child care is necessary to allow an adult member to work, attend school, or actively seek employment.

The following standards are the criteria for allowing child care expenses as a deduction:

- a) Child care expenses must be "reasonable" and may not exceed the amount of employment income that is included in annual income. If child care is required to allow one or more family members to be employed, the amount of the child care expense may not exceed the total of earned income received by all family members.

One or more family members can engage in qualifying activities for child care purposes as long as the limitations of reasonable expenses for job search and education and expenses not exceeding earned income for employment are applied.

- b) The amount of child care expenditure must be reasonable if the purpose of the child care is to allow a family member to actively seek employment or to further his or her education
- c) The PHA will make a determination as to what is a reasonable rate for child care based on local conditions and rates. The PHA will obtain information from the social services agency that certifies child care providers, day care centers, federally funded after school programs, etc., and determine a scale of reasonable costs. If it is determined

that there is a significant difference between in-home care and day care center charges, the PHA will develop a separate scale for each.

- d) To claim the deduction, verification from the child care provider must include the name, address, and phone number of the company or individual child care provider, the names of the children being cared for, the number of hours for which child care is provided, the rate of pay, and the typical yearly amount paid (taking into account school and vacation periods).
- e) Child care to work: The maximum child care allowed would be based on the amount earned by the person enabled to work. The "person enabled to work" is the adult member of the household who earns the least amount of income from employment. The child care deduction may not exceed the amount of income earned by the person enabled to work.
- f) Child care for school: To qualify for child care deductions under the provision of furthering education, the family member must demonstrate that they are enrolled in some accredited or approved educational or training program. While the type of educational effort may vary widely and be either full-time or part-time, evidence of regular participation will be required and verified by the PHA.

Furthering education can include but is not limited to; completing high school or equivalency (GED), trade school, Community or Junior College, four-year College, technical schools, ESL or basic education classes, apprenticeship programs, certificate programs, clerical school and even independent study, if the family member must access on-line educational programs out of the home.

The family member must provide and the PHA verifies information on the type of educational program, the number of units or hours of participation, the name of the educational institution or training facility.

- g) Child care to seek employment: The deduction for child care to seek employment must not exceed the Annual Adjusted Income of the family member seeking employment. The deduction does not include transportation costs, or other expenses incurred, and are limited to one year per individual.

To qualify for child care deductions under the provision of actively seeking employment, the family member may be a participant in an official job search program or may simply demonstrate independent job search activities. In either case, in order to verify the time spent in seeking employment, the PHA will require the family to maintain a log that reflects the following:

- (1) The date and time of departure from home (including time needed to drop off children for child care, if provided outside the home);
- (2) The name and location of the prospective employer, unemployment office or employment agency;
- (3) The name of the person(s) contacted and telephone number;
- (4) The length of time for completion of the application, the interview, testing or other job search activity;
- (5) The time the children are picked up and the time arrived at home;
- (6) The name, address, telephone number and social security number of the child care provider; and

- (7) The total amount paid for the child care.
 - (8) If multiple applications are placed or interviews are held consecutively or on the same day, the above information should be provided for each prospective employer or agency. The PHA will use this information to verify the contacts and the eligibility of child care expenses.
 - (9) Since job search activities may be irregular and not easily anticipated, the PHA may attempt a limited inclusion at the annual certification and conduct an interim examination after some actual expenditures have been incurred. In many instances, job search periods will be of limited duration, but in some cases the job search period may be extended, especially if the type of employment sought is limited in availability, employment opportunities of any kind are scarce or the job skills needed are unusual.
- h) If the family has school age children who require care only before and/or after school hours, the PHA will consider payment for before and/or after school activities to be a reasonable expense in lieu of individual child care.
 - i) The PHA will allow child care expense coverage to include pick-up and drop-off of children at the provider's location. The PHA will also evaluate expenses which may exceed the norm if child care must be provided evenings, nights or week-ends for either educational or employment purposes.
 - j) The PHA will review the work hours or educational hours to assure that the combined employment or education hours plus pick-up/drop-off times are within a reasonable timeframe (generally determined to be no more than one hour before or after scheduled work hours or class times). Exceptions may be made for overtime, special seminars or testing, providing the PHA can verify the extended times.
 - k) Child care expenses may be divided between two households in cases of split custody. If only one custodian is an assisted family, the cost of child care will be pro-rated based on the percentage paid by each custodial parent. The cap on eligibility for child care expenses allowed the assisted family would still be based on the earned income limitation.
 - l) At annual certification the PHA will determine the total anticipated child care expense for the employed family members (including increases for care need during school breaks and summer vacations for school age children) and average the amount over twelve (12) months. Should there be a significant variation from the estimated amount the family may request an interim certification adjustment.
 - m) The deduction for child care is not given if an agency or person outside the household reimburses the expenses.

H. Minimum Rent

The PHA has adopted a minimum rent of \$50.00.

Hardship Exemption

1. The minimum rent requirement may be waived due to certain financial hardships. The request for minimum rent hardship must be made in writing to the PHA prior to the rent becoming delinquent. The PHA will verify whether the hardship claimed is temporary or long term. Payment of the minimum is suspended immediately for ninety (90) days when a hardship is requested on one of the following conditions:
 - a) The family has lost eligibility or is awaiting an eligibility determination to receive federal, state or local assistance, including a family having a non-citizen household member lawfully admitted for permanent residence and who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996;
 - b) The family income has decreased due to changed circumstances such as loss of employment, separation, divorce, and abandonment;
 - c) The family would be evicted as a result of imposing the minimum rent requirement;
 - d) There has been a death in the family; or
 - e) There are other hardship situations determined by the PHA on a case-by-case basis, i.e. alimony, child support, etc.

Financial hardship exemption only applies to payment of minimum rent - not to rent based on the statutory formula for determining the Total Tenant Payment (TTP) or Flat Rent in the public housing program.

2. If tenant initiates a request for a hardship exemption that the PHA determines is temporary in nature:
 - a) Rent may be suspended, during the ninety (90) day period beginning on the day the request is made. At the end of the ninety (90) day period, the minimum rent is reinstated retroactively to the date of suspension.
 - b) The PHA will allow the family a maximum of six (6) months to make payment of any delinquent minimum rent payments accrued during the suspension period. However, the family must execute a Repayment Agreement.
 - c) The family may not be evicted for non-payment of rent during the ninety (90)-day suspension period.
 - d) If the hardship is subsequently determined to be long-term, the PHA will retroactively exempt residents from the minimum rent requirement for the ninety (90)-day period.
3. If the circumstances supporting the request for a minimum rent hardship exemption are long term, tenant's rent will be based on the statutory income-based rent calculation formula during the minimum rent exemption period.
4. Hardship determinations are subject to the PHA's Informal Hearing Process and families are exempt from any escrow deposit that may be required under regulations governing the hearing process for other determinations.

I. Prorated Assistance for “Mixed” Families

1. Applicability

Prorated assistance must be offered to any mixed applicant or participant family. A “mixed” family is one that includes at least one U.S. citizen or eligible non-citizen and any number of ineligible non-citizens.

If the household is sole-member, the head of household must be a citizen or eligible non-citizen.

In all other cases, the head of household, spouse and co-head are not required to be either citizens or non-citizens. A qualifying minor will satisfy the requirement of having at least one member who is a citizen or eligible non-citizen.

2. Prorated Assistance Calculation

Prorated assistance is calculated by determining the amount of assistance payable if all family members were eligible and multiplying by the percent of the family members who actually are eligible. Total Tenant Payment is the gross rent minus the prorated assistance.

J. Zero Income Families

Families reporting no family income will be asked at application and re-certification how the family pays for necessary living expenses. If it is determined that the family is receiving regular monetary or non-monetary contributions and/or gifts from non-household members, the value of these gifts will be annualized to estimate income.

If it is determined that the family receives no income from gifts, contributions, or any other source, the family will be required to complete, sign, and date a statement of zero family income. Such families will be required to maintain all receipts for any expenses (e.g., food and clothing, utility bills) for the most recent three (3) months. This amount, excluding any food stamps or the PHA Utility Allowance payments, will be annualized to determine annual income. Zero income families will be reevaluated every ninety (90) days to determine if there are any new sources of income. The reevaluation may include an inquiry to the Department of Labor.

1. If a family reports that it does not have an income, all adult members will be required to sign a no income affidavit, and answer all questions on a zero income questionnaire and execute a temporary ninety (90) day recertification.
2. Family members 18-25 years of age who are attending school full-time may not be required to report income status every ninety (90) days.
3. Where outside sources are paying bills or donating household goods on a regular basis, the value of these contributions will be included as annual income.

CHAPTER 10. Notification of Eligibility

After completing the screening process, the PHA will, in writing, promptly notify applicants, both ineligible and eligible, of the results of the screening. This will be done as follows.

A. Ineligible Applicants

The PHA will promptly notify, in writing, any applicant determined to be ineligible for admission to a development of the basis for such determination within ten (10) working days, and will provide the applicant, upon request, an opportunity for an informal hearing on such determination.

Informal hearings may be conducted with the mediator/hearing officer attending either in person or by remote electronic access such as webcam.

1. Informal hearing for denial of admission due to ineligibility, other than non-citizen eligibility:
 - a) The notice will contain a brief statement of the reasons for the determination, and will state that the applicant has the right to meet with the PHA's designated person to review it.
 - b) If the meeting is requested, it will be conducted by a person or persons designated by the PHA. Those designated may be an officer or an employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate.
 - c) The policies will be carried out in accordance with HUD's requirements.
 - d) The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, familial status, sexual orientation, gender identity, marital status or disability.
 - e) The request for a hearing must be submitted to the PHA either orally or in writing no later than ten (10) calendar days from the postmark date of the denial notice.
 - f) If the PHA determines that an applicant does not meet the criteria for receiving a preference, the PHA will provide the applicant with written notice of the determination within ten (10) days.
2. Informal Hearing Policies for Applicants Denied Assistance for Non-Eligible Immigration Status.
 - a) Requests for an informal hearing will be personally presented either orally or in writing, to the PHA's administrative office so that the grievance may be discussed informally.
 - b) The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.
 - c) The applicant shall be provided the opportunity to examine and copy at the applicant's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant's eligibility status, or in the possession of the CIS (as permitted by CIS requirements), including any records and regulations that may be relevant to the hearing.

- d) The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- e) The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.
- f) The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf.
- g) The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the PHA, as may be agreed upon by both parties.
- h) The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to be provided by the PHA).
- i) The PHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within fourteen (14) days of the date of the informal hearing.
- j) A decision against a family member, issued in accordance with 24 CFR 5.514(d) does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.
- k) If the family chooses not to continue to contend eligible immigration status, the family may be offered prorated housing assistance, if at least one family member is a U.S. citizen or has eligible immigration status (not a non-citizen student).

B. Eligible Applicants

When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the resident selection criteria, the applicant will be notified, in writing, of the approximate date of occupancy insofar as that date can be reasonably projected.

C. Resident Orientation

Eligible applicants selected for admission will be required to participate in an orientation program (if provided by the PHA) to acquaint new resident families with the policies herein; the Lease Agreement; maintenance procedures; services provided by the PHA; Grievance Procedures; resident rights, responsibilities and obligations. After resident move-in, PHA staff will acquaint the family with the operation of heating, cooling, and plumbing equipment in the units.

CHAPTER 11. Types of Developments and Requirements

Housing Authorities typically have several types of housing developments and dwelling unit sizes. Admission requirements for these may be different. The following outlines requirements for general occupancy developments, developments for the elderly, and units designed for the disabled.

A. General Occupancy Developments

1. The PHA will not give elderly families or non-elderly families a preference over single applicants for admission to general occupancy developments.
2. An elderly family that wants to, or needs to, be admitted to a general occupancy development must be considered on the same basis as any other family.
3. If units of appropriate sizes are available in both a general occupancy development and a development for the elderly, elderly families with children or young disabled family members may choose to be housed in the general occupancy development.

B. Mixed Population Developments

1. Preference for Elderly Families

Unless the PHA has obtained HUD approval to designate certain developments or portions of developments for the elderly and/or disabled, the PHA may not limit occupancy of certain units to those groups.

- a) If a non-elderly, non-disabled applicant is next on the waiting list and the unit available is located in a development originally built for elderly/disabled but not designated, the PHA must offer that unit to the applicant, even if the family includes children, as long as the composition and size of the family meets the PHA's occupancy standards.
- b) Elderly and non-elderly disabled may receive preference over non-elderly families in mixed population developments.
- c) Elderly and non-elderly disabled families will not receive preference in general occupancy developments.

2. Selection Preference for Mixed Population Developments

- a) The PHA is required to give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. No limit will be established on the number of elderly or disabled families who may be accepted for occupancy in such developments.
- b) When offering units in mixed population developments, the PHA will first offer units with accessible features to persons with disabilities who require the accessibility features of the unit.

3. Discretionary Preference for Near Elderly Families in Mixed Population Developments

A near elderly person(s) is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons, who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

- a) In no event will the PHA admit a near elderly family to a development for elderly families if there are eligible elderly families on the PHA's waiting list that would be willing to accept an offer of a suitable vacant unit in a mixed population development.
 - b) When the PHA determines that there are not enough elderly families to fill all of the units that are currently vacant or expected to become vacant within the next twelve (12) months, the PHA will give near elderly families a preference for admission to mixed population developments.
 - c) Before electing to give near elderly families such a preference, however, the PHA will conduct outreach to attract eligible elderly families, including:
 - (1) Those groups that historically have been the least likely to apply; and
 - (2) Where appropriate, elderly families residing in general occupancy developments.
 - d) If the PHA elects to give near elderly families a preference for admission to a mixed population development, the PHA will apply the preference when it selects applicants for admission from among near elderly families.
4. Discretionary Preference for Near Elderly Single Persons in Mixed Population Developments.
- If a near elderly applicant is a single person, as that term is defined in HUD regulations, the near elderly single person is given a preference for admission over other single persons to mixed population developments.
5. The PHA will not set a minimum age (such as 50 or 55) for the admission of persons who are disabled to mixed population developments.
6. The PHA will not exclude families with children from mixed population developments, provided such developments have dwelling units of the appropriate sizes for such families.

C. Units Designed for the Disabled

1. Without incurring vacancies, the PHA will make every reasonable effort to provide dwelling units that are specially designed for families with physically disabled members who require such units.
2. The PHA may provide a dwelling unit designed for the disabled to a family that includes a mobility impaired person (such as a child or a grandparent who uses a wheelchair) even though the family head or spouse is not disabled.
3. When there are not enough disabled applicants to fill units especially designed for such persons, non-disabled applicants may be offered such units. However, it must be made clear to the family that when another unit becomes available which meets the family's needs, they will be required to move if the accessible unit is needed for a family with a member who has a disability. The lease agreement will be modified to reflect this requirement.
4. Should there be a disabled applicant or resident needing a unit with special features, that applicant/resident will be offered the unit prior to transferring a family or individual who is over-housed or under-housed.

D. Designated Housing

The PHA will give priority for occupancy of the designated housing development units to designated families.

1. If there are an insufficient number of elderly families to fully occupy the units in the designated development, the PHA may make units available to near elderly families, who qualify for preference.
2. If there are an insufficient number of elderly and near elderly families to fully occupy the units in the designated development, the PHA shall make available to all other families any dwelling unit that is:
 - a) Ready for re-rental and for a new lease to take effect; and
 - b) Vacant for more than sixty (60) consecutive days.
3. If any disabled family or elderly family chooses not to occupy or accept occupancy in a designated development there will be no adverse effect on:
 - a) The family's admission to or continued occupancy in public housing; or
 - b) The family's position on or placement on a public housing waiting list.

E. See Appendix C for Development Units.

CHAPTER 12. Occupancy Standards

The PHA's occupancy standards specify the minimum and maximum number of household members who will be permitted to occupy dwelling units of various sizes, depending on family size, composition and extenuating circumstances, such as the ages, sexes, and disabilities of household members. The standards take into consideration the need to assign a unit with the smallest number of bedrooms that will avoid overcrowding the unit or project and minimize vacancies. The occupancy standards are as follows.

1. The Standards described below take into consideration the minimum number of occupants for admission and the maximum number of persons for continued occupancy based on an occupancy standard of two persons per bedroom.

Number of Bedrooms	Minimum No. Of Persons	Maximum No. Of Persons
0	1	1
1	1	2
2	2	4
3	3	6
4	4	10

2. Units will be assigned so that persons of the opposite sex, other than husband and wife, will not be required to occupy the same bedroom, except for minors under the age of six (6) years.
3. Every family member, regardless of age, will be counted as a person. For the purpose of establishing the unit size for a family, an unborn child will not be counted as a member of the family household.
4. Normally, two persons will be assigned to each bedroom.
 - a) Persons of opposite sex, six (6) years of age or older will not be required to occupy the same bedroom, except where no unit of a suitable size is available for transfer of the family.
5. A live-in aide who is not a family member normally will be provided a separate bedroom.
6. For reasons of health (old age, physical disability, etc.), a separate bedroom may be provided for individual family members, as verified by a medical professional.
7. When the PHA determines that a family is over-housed or under-housed according to the above standards, the PHA will require the family to transfer to a unit of the appropriate size. Transfers of this nature will be effective prior to voluntary or family requested transfers.

8. Foster children will be counted as family members in determining the bedrooms to be assigned.
9. If the PHA is unable to fill units with families of appropriate sizes and types, it will house eligible families of the most nearly appropriate sizes on a temporary basis. Each such family will be informed, before moving in, of the dwelling lease agreement "to transfer to an appropriate size dwelling unit, based on family composition, upon appropriate notice by PHA that such a dwelling unit is available."
10. Exceptions to the minimum standards will be made if they are necessary to provide reasonable accommodation for a person with disabilities.
11. A single head of household shall not be required (but may choose) to share a bedroom with his/her children.
12. Additional bedrooms are not provided for visitors or guests. Residents will be allowed to have visitors for a period of up to fourteen (14) cumulative days in any twelve (12) month period, except in the case of a family member requiring care during illness or recuperation from illness or injury as certified by a medical professional. Written permission must be obtained from the PHA for any deviation from the occupancy standards included in this policy which may result from the presence of the temporary care giver in the unit.
13. IMPORTANT: The maximum and minimum number of persons per unit shall be discussed with each applicant family. Families will also be informed about the status and movement of the various waiting lists and sub-lists maintained by the PHA.
 - a) Families will be asked to declare in writing the waiting list on which they wish to be placed.
 - b) If a family opts for a smaller unit than would normally be assigned under the standard (because, for example, the list is moving faster), the family will be required to sign a statement agreeing to occupy the unit assigned at their request until their family size or circumstances change.
 - c) The PHA shall change the family's sub-list at any time while the family is on the waiting list at the family's request.

CHAPTER 13. Offering the Units (Tenant Selection and Assignment Plan)

As dwelling units become available for occupancy, responsible PHA employees will offer units to applicants on the waiting list. In accordance with the Quality Housing and Work Responsibility Act of 1998 (QHWRA), the PHA encourages occupancy of its developments by families with a broad range of incomes. At a minimum, forty percent (40%) of all new admissions on an annual basis will be extremely low-income families (See Appendix D for Income Limits). The offer of assistance will be made without discrimination because of race, color, religion, sex, national origin, age, disability or familial status.

A. Income Limits and Targeting

Families with income of eighty percent (80%) or less of the published Average Median Family Income (AMFI) are eligible for admission to the Low-Rent Public Housing program. 24 CFR 960.503 and 505 allow exceptions to this rule for PHA's with fewer than 250 units or for increasing security by housing a police officer who may be income ineligible.

Not less than forty percent (40%) of the families admitted to the PHA's public housing program during the fiscal year from the waiting list shall be extremely low-income families.

B. Deconcentration

The offers will be made in the following manner.

To the maximum extent feasible, the deconcentration and income-mixing requirements of the QHWRA will be followed. Families with incomes ranging from 0% to 80% of median income will be selected in accordance with the tenant selection section of this policy. Families with the highest incomes will be offered units in developments where average family incomes are lowest. Conversely, families with the lowest incomes will be offered units in developments with the highest average family incomes. The PHA may offer incentives to families to accomplish the de-concentration and income-mixing objectives.

The PHA may employ a system of income ranges in order to maintain a resident body composed of families with a range of incomes and rent paying abilities representative of the range of incomes among low-income families in the PHA's area of operation, and may take into account the average rent the PHA should receive to maintain financial solvency. The PHA's selection policies are designed so that selection of new public housing residents will bring the PHA's actual distribution of rents closer to the projected distribution of rents.

The PHA will select, based on date and time of application and preferences, two (2) families in the extremely low-income category and two (2) families from the lower income category (31% to 80% of area median income) alternately until the forty percent (40%) admission requirement of extremely low-income families is achieved (2 plus 2 policy).

After the minimum level is reached, all selections will be made based solely on date, time and preferences.

Any applicants passed over as a result of implementing this 2 plus 2 policy will retain their place on the waiting list and will be offered a unit in order of their original placement on the waiting list.

C. Unit Offer

1. Under this plan, each qualified applicant first in sequence on the waiting list is made one offer of a unit of appropriate size and amenities (if an accessible unit is required) in the complex that has the most vacancies (and where their race does not predominate). If the offer is rejected, the applicant must be offered a unit of appropriate size in the complex that has the second highest number of vacancies (and where their race does not predominate). If that offer is rejected, a third offer may be made. To the maximum extent possible, the offers will also be made to affect the PHA's policy of economic de-concentration. If that offer is rejected, the applicant will be removed from the waiting list, unless the applicant has good cause (as defined below) to reject the offer.

The applicant must accept the vacancy offered within three (3) days of the date the offer is communicated (by phone, mail or other method of communication designated by the applicant) or be removed from the waiting list. A letter will be sent to the applicant confirming any offer made by telephone. If the PHA is unable to contact the applicant by phone, the PHA will send a registered letter, return receipt requested.

2. When leasing a vacant dwelling unit, the PHA will offer the unit to applicants on the waiting list in sequence, until someone accepts it, in accordance with the PHA's local preferences and/or the date and time of application.
3. If more than one unit of the appropriate size and type is available, the first unit to be offered will be the unit that will serve to achieve the PHA's goal of economic de-concentration.
4. The applicant will not be considered to have been offered a suitable unit if:
 - a) The unit is not of the proper size and type, and the applicant would be able to reside there only temporarily (e. g., a specially designed unit that is awaiting a disabled applicant needing such a unit).
 - b) The unit contains lead-based paint, and accepting the offer could result in subjecting the applicant's children who is under six (6) years of age to lead-based paint poisoning.
 - c) The applicant is unable to move at the time of the offer and presents clear evidence that substantiates this to the satisfaction of the PHA. Examples:
 - (1) A physician verifies that the applicant has just undergone major surgery and needs a period of time to recuperate; or
 - (2) A court verifies that the applicant is serving on a jury which has been sequestered.
 - d) Accepting the offer would result in undue hardship to the applicant, and such acceptance is not related to consideration of race, color, creed, sex, age, religion, disability, national origin, or familial status, and the applicant presents clear evidence which substantiates this to the satisfaction of the PHA. Examples of this circumstance are inaccessibility to employment, education or job training, children's day care or educational programs for children with disabilities if the move would require a household member to quit a job, education or training program or take the child out of the special program.
 - e) A low-income family refuses the offer of a unit in a development with very low-income families or vice versa.

D. Primary Residence

1. The unit leased from the PHA must be the family's primary residence. Assistance will be terminated if the PHA determines the leased unit is not the family's primary residence.
2. Factors that may be considered in determining whether a tenant remains a primary resident include:
 - a) Family members using an address other than the PHA unit as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a public agency;
 - b) Using an address other than the PHA unit as a voting address;
 - c) Subletting the housing accommodation.
 - d) Absence from the unit for thirty (30) consecutive days without notice and/or PHA approval.
 - e) Absence from the unit for more than thirty (30) cumulative days during a lease period, except for temporary periods of absence including military service, enrollment as a full-time student; relocation by court order; temporary relocation due to employment; hospitalization or other reasonable grounds.
 - f) PHA exceptions to d) and e) above will be subject to PHA approval on a case by case basis.

CHAPTER 14. Rental Fees and Other Charges

The following outlines the policies for calculating rental fees and other charges to be paid by PHA residents.

A. Tenant Rent

Tenant rent is the amount of rent payable by the resident to the PHA. Tenant rent is Total Tenant Payment (TTP) minus any applicable utility allowance for tenant paid utilities.

1. Rent is due and payable on the first day of the month and is delinquent if not paid by the close of business on the fifth day of the month, unless the fifth day falls on a week-end or holiday, in which case rent will be late as of the close of business on the next full business day.
2. The PHA's policy does not allow acceptance of cash for rent or other charges. Rental and other payments will be accepted only in the form of money orders, cashier's checks or personal checks.
3. Personal checks may be presented until or unless more than one Non-Sufficient Funds (NSF) check is presented. An insufficient fund (NSF) fee of \$25.00 will be assessed against the resident's account.
4. The resident will then be required to make payment using money orders or cashier's checks.

B. Late Fees

1. If rent is unpaid by the close of business on the fifth day of the month, a one-time per month late fee of 10% of rent due will be assessed.

C. Choice of Rent

1. At all new admissions, the PHA will permit the family the choice between the flat rent amount and the income-based rent.
2. Annually, the PHA will give each family the opportunity to select between two methods of determining the monthly amount of tenant rent payable by the family. The family may choose to pay as tenant rent a flat rent or a calculated income-based rent.
 - a) Flat Rent: Is determined annually by the PHA and is based on the market rental value of the unit. The PHA will establish a flat rent for each public housing unit that is:
 - (1) No less than 80 percent of the applicable Fair Market Rent (FMR); or
 - (2) No less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area. If HUD has not determined an applicable SAFMR or unadjusted rent,

- (3) The PHA may request and HUD may approve a flat rent lower than the FMRs/SAFMRs. The PHA must submit a market analysis demonstrating that the proposed flat rent is a reasonable rent in comparison to rent for other comparable unassisted units based on:
- a. Location
 - b. Quality
 - c. Size
 - d. Unit Type
 - e. Age of the public housing unit
 - f. Amenities
 - g. Housing Services
 - h. Maintenance
 - i. Utilities to be provided by the PHA in accordance with the lease

The PHA must revise, if necessary, the flat rent amount for a unit no later than 90 days after HUD issues the new FMRs.

For unit where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance for which the family might otherwise be eligible.

If a new flat rent would cause a family's rent to increase by more than 35%, the family's rent increase must be phased in at 35% annually until such time that the family chooses to pay the income-based rent or the family starts to pay the established flat rent.

(Appendix E: Table of Flat Rents shows the PHA's flat rents by development, unit size and type)

- b) Income-Based Rent: Is a tenant rent which is based on the family's income and the PHA's rent policies for determination of the rent. The income-based rent plus any utility allowance will not exceed the Total Tenant Payment (TTP) as determined by the statutory formula

The PHA uses the standard formula for calculating income-based rent which is found in D of this section.

3. The PHA will provide through its orientations, individual counseling, and by written notices, sufficient information to allow families to make an informed choice of rent payment options. At a minimum, families will be advised of:
- a) The dollar amounts of tenant rent for the family under each option; and
 - b) The PHA's policies on switching the type of rent in circumstances of financial hardship.
 - c) At initial occupancy, or in any year where a current program participating family is paying the income-based rent, the PHA:
 - (1) Will conduct a full reexamination of family income and composition at the first annual rent option (Year 1);
 - (2) Will inform the family of the flat rent amount and the rent amount determined by the reexamination of family income and composition;
 - (3) Will inform the family of the PHA's policies on switching rent types due to a financial hardship; and

- (4) Will apply the family's rent choice at the next lease renewal.
- d) At the second and third annual rent options, for families that choose to switch from income-based rent to pay the flat rent, the PHA:
 - (1) Will conduct a full reexamination of family income and composition for the second and third annual rent option.
 - (2) Must inform the family of the updated flat rent amount, and the rent amount determined by the most recent reexamination of family income and composition;
 - (3) Must inform the family of the PHA's policy of switching rent types due to a financial hardship; and
 - (4) Must apply the family's rent decision at the next lease renewal.
- 4. If the family experiences a financial hardship, the family may at any time, before the next annual choice of rent option, request to be switched to income-based rent.
 - a) The PHA will switch the family's rent from flat rent to income-based rent on the first of the month following verification of the financial hardship.
 - b) Once the family switches from flat rent to income-based rent due to financial hardship, the family may not change back to flat rent until its next annual reexamination.
- 5. The PHA has established the following policies for determining when payment of flat rent is a financial hardship:
 - a) The family's income has decreased because of changed circumstances, including loss or reduction of employment, death in the family which results in reduction of income or payment of funeral expenses, reduction in or loss of earnings, or reduction or loss of other assistance;
 - b) The family has experienced an increase in expenses, because of changed circumstances, for un-reimbursed medical costs, child care, transportation, education, or similar items; and
 - c) Other reasonable financial hardship circumstances which may be applied on a case-by-case basis at the discretion of the PHA.
- 6. The PHA will review annually, and revise if necessary; the flat rent amount for a unit no later than 90 days after HUD issues the new FMRs.
 - a) The annual review may result in either an increase or decrease in the flat rent.
 - b) Families paying flat rent will not have their rent adjusted until their annual reexamination or annual update.
 - c) If the family's rent increases more than 35 percent due to the flat rent changes, the family's rent increase must be phased in at 35 percent annually until such time the family chooses to pay the income-based rent or the family is paying the flat rent established by the PHA.

D. Total Tenant Payment (TTP)

The Income-Based TTP for families shall be the highest of the following, rounded to the nearest dollar:

- 1. Thirty percent (30%) of the family's Monthly Adjusted Income; or
- 2. Ten percent (10%) of the family's Monthly Gross Income; or

3. Welfare rent (in as-paid welfare states); or

When welfare rent is the higher, the PHA will recalculate rent once after the welfare department recalculates welfare based on the PHA's initial rent determination.

4. A minimum rent of \$50.00.

The minimum rent requirement may be waived under certain financial hardships providing that the family requests the waiver in writing prior to the rent becoming delinquent as detailed in Chapter 9 above under paragraph H "Minimum Rent".

E. Special Reexamination

1. If, at the time of admission, a family's existing conditions of employment are too unstable to develop the adjusted income into the coming twelve (12)-month period for the purpose of determining TTP, the PHA will schedule a special reexamination.
 - a) This special reexamination will take place within 30, 60, or 90 days of admission, or at a date by which the PHA estimates that the family's circumstances will be stable.
 - b) If at the time of such special reexamination it is still not possible to make a reasonable estimate of adjusted income, special reexaminations will continue to be scheduled until a reasonable estimate of the adjusted income can be made.
 - c) Increases in rent determined at special reexaminations shall be made effective the first of the second month following the final rent determination. If the determination results in a decrease in rent, the effective date will be the first of the month following the reexamination verification.
 - d) Until the final rent determination can be made, the family will pay rent based upon the existing adjusted income.
2. Persons reporting zero income will have their circumstances reexamined every ninety (90) days until they have a stable income. Persons claiming zero income will also be asked to complete a family expense form. This form will ask residents to estimate how much they spend on food, beverages, transportation, health care, child care, debts, household items, etc. Residents will then be asked how they pay for these items.

F. Policies to Obtain a Hearing Regarding Amount of Rent

1. Before a hearing is scheduled in any grievance involving the amount of rent that the PHA states is due, the family must pay an escrow deposit to the PHA in the amount which the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must continue to deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or panel.
2. The PHA must waive this requirement for escrows concerning the financial hardship exemption of minimum rent or reductions in welfare benefits related to work requirements.
3. Unless the PHA waives the requirement or it meets the criteria of F 2. above, the family's failure to pay the escrow deposit will terminate the grievance procedure.
4. The family's failure to pay the escrow deposit does not constitute a waiver of the family's right to contest the PHA's disposition of the grievance in any appropriate judicial proceeding.

G. Charges In Addition to Rent

1. The PHA dwelling lease imposes charges for: (1) the late payment of rent and NSF check charges; (2) security deposits; (3) charges for maintenance and repair beyond normal wear and tear; (4) charges for the consumption of excess utilities; (5) pet security deposits; and (6) the payment of all court costs, expenses and attorney fees incurred in enforcing the dwelling lease or in recovering possession of the premises, if ordered by the court, unless the resident prevails in such legal action.
2. The PHA will provide basic pest control services without charge to its residents. Only staff or contractors who possess current pest control licensing will conduct pest control activities subject to law or regulation.
3. The security deposit is made upon occupancy and the pet security deposit and/or fee is paid in full prior to the pet being brought into the unit. Arrangements for partial payments of security deposits may be considered on a case by case basis. Partial payments for pet security deposits or fees will be considered on a case by case basis, but the security deposits or fees must be paid in full before the pet is allowed in the unit. Security deposits for a pet are not charged if the animal is determined to be a service animal needed by a person with a disability.
4. The payment of court costs by the resident occurs only when the PHA takes action against the resident and prevails.
5. The other charges listed above will become due and payable the first day of the month following the month in which the charge or charges incur and two (2) weeks after the PHA notice is provided to the resident.
6. The resident will be left a copy of the work order with charges or will be invoiced by the PHA. Invoices and work orders will state that the resident has a right to grieve said charges according to the PHA's established Grievance Procedures.
7. Appendix A contains the PHA's list of charges in addition to rent.

CHAPTER 15. Security Deposit

1. The PHA requires residents to pay a security deposit. The purpose of this deposit is to reimburse the PHA for any resident-caused damage to the dwelling unit, unpaid rent and other unpaid charges when a resident vacates the unit. Requirements concerning deposits follow.
2. The PHA currently requires all resident families to pay a Security Deposit prior to occupying a unit.
3. The PHA may provide for the gradual accumulation of the Security Deposit paid by a resident on a case-by-case basis, not to exceed 3 months. If payments are approved, the PHA requires a minimum of 33.33% of the security deposit to be paid prior to move-in.
 - a) The PHA will deposit the Security Deposit paid by a resident in a bank or other lending institution. It will maintain full, accurate and detailed accounting records with respect to the Security Deposit paid by each resident.
 - b) The PHA will not pay a resident interest on a security deposit deposited in an account in a bank or other lending institution.
 - c) The PHA will not use the security deposit for any purpose whatsoever while the resident continues to occupy a dwelling unit.
 - d) When the resident vacates the premises, the PHA will refund the security deposit to the resident in accordance with state law, provided the following conditions have been met:
 - (1) The PHA has inspected the dwelling unit and attests that there are no resident-caused damages, or if there are such damages, the resident has paid the PHA for the cost of the necessary repairs and/or replacements to the dwelling unit.
 - (2) The resident does not owe the PHA rent or other charges.
 - (3) The dwelling unit and all equipment therein have been left reasonably clean and free of all trash and debris.
 - (4) The resident has returned all keys to the dwelling unit and any or all tools, supplies and equipment borrowed from the PHA.
 - e) If the head of a single member family dies and all of the above conditions prevail, the PHA will dispose of the security deposit in accordance with state laws, rules and regulations pertaining to the resident's estate.
 - f) Security deposits amounts are detailed in Appendix F of this Policy.

CHAPTER 16. Utility Allowances

A. General Policy

Allowances for PHA-furnished utilities represent the maximum consumption units (e.g., kilowatt hours of electricity) that may be used by a family occupying a dwelling unit without a surcharge for the excess consumption against the resident based on cost.

Allowances for resident-purchased utilities represent fixed dollar amounts that are deducted from the total Tenant Rent chargeable to a resident who pays the actual utility charges directly to the utility suppliers. (See Appendix B)

The information which follows does not apply to dwelling units which are served by PHA-furnished utilities, unless check-meters are installed to measure the actual utility consumption for the individual dwelling units, except that residents in such units will be subject to charges for the consumption of resident-owned major appliances, or for the optional functions of PHA-furnished equipment such as air conditioners.

The PHA will take the following actions with respect to allowances:

1. For all check-metered utilities, establish consumption allowances for PHA-furnished utilities.
2. For all utilities purchased directly by residents, establish utility allowances for resident-purchased utilities.
3. Maintain a record of the basis on which allowances and scheduled surcharges are established and revised, plus records of any revisions to the allowances and scheduled surcharges. The PHA will make such records available for inspection by residents.
4. Notify all residents of proposed allowances, scheduled surcharges and revisions. Transmit the notice to residents not less than sixty (60) days prior to the proposed effective date of the new allowances, scheduled surcharges or revisions and describe the basis for determining these.

Include in the notice a statement of the specific items of equipment and functions whose utility consumption requirements were included in determining the allowances, scheduled surcharges or revisions. Also include the name and address of the place where the PHA maintains, and residents may inspect, records pertaining to these matters.

5. Provide all residents an opportunity to submit written comments at least thirty (30) days before the proposed effective date of the new allowances, scheduled surcharges or revisions.
6. Maintain the resident comments and make them available for inspection by the residents and HUD.
7. Establish separate allowances for each utility, and for each category of dwelling units that are reasonably comparable in utility usage.
8. Establish allowances for both PHA-furnished utilities and resident-purchased utilities so that they include a reasonable amount of consumption for:
 - a) Major equipment or utility functions furnished by the PHA for all residents, such as a heating furnace and a hot water heater;

- b) Essential equipment, whether or not furnished by the PHA, such as a cooking stove, range or refrigerator; and
 - c) Minor items of equipment furnished by residents, such as toasters, radios and television sets.
- 9. In establishing allowances, take into account relevant factors affecting consumption requirements, such as the equipment and functions to be covered by the utility allowance; the local climate; design and construction of the housing development; energy efficiency of appliances and equipment; utility consumption requirements of appliances and equipment to be covered by the TTP; insulation, weatherization and other physical aspects of the housing development; and temperature of domestic hot water, size of units; and number of occupants.
- 10. Incorporate into the utility allowance the full price of any utility for which the resident pays a fixed price. For example, garbage collection cost.
- 11. For dwelling units that are subject to consumption allowances for PHA-furnished utilities and have check-meters installed, establish surcharges for utility consumption in excess of the allowances. Base surcharge on the PHA's average utility rate; compute the surcharge on the PHA's average utility rate; compute the surcharge on either a straight per unit-of purchase basis (such as so many cents per kilowatt hour of electricity) or on a stated block of excess consumption, and describe in the PHA Schedule of Surcharges the basis for calculating such surcharges.
- 12. For dwelling units that are served by PHA-furnished utilities and have no check-meters installed, establish a Schedule of Surcharges. Such schedules indicate the additional dollar amounts residents will be required to pay, on the basis of the estimated utility consumption attributable to resident-owned major appliances or optional functions, such as air conditioning or PHA-furnished equipment. In such Schedule of Surcharges, state the resident-owned equipment or PHA-furnished equipment for which surcharges will be made, and the amounts of such surcharges, based on the PHA's cost of the utility consumption estimated to be attributable to the reasonable use of equipment.
- 13. At least annually, review the basis on which the utility allowances has been established, and if necessary to adhere to the above standards, revise the allowances. Include in the review all changes in circumstances, such as the completion of a modernization program, energy conservation measures, and changes in utility rates. Following the annual review, the PHA will adjust the utility allowances if there is a ten percent (10%) or more change in the rates of one or more utilities.
- 14. On a case-by-case basis, grant individual resident relief from the surcharges for excess consumption of PHA-furnished utilities, or from the payment of utility supplier billings in excess of the allowances for resident-purchased utilities, on such reasonable grounds as the PHA deems appropriate. For example, special needs of the elderly, disabled, or special factors affecting utility usage that are not within the control of the resident. (Examples: use of a battery charger for recharging electric wheelchair batteries or use of oxygen equipment.)
- 15. Adopt the criteria for granting such individual resident relief, and the procedures for requesting such relief, at the same time as the methods and procedures for determining utility allowances. In each notice to residents (new or existing), include information about the availability of the individual resident relief.

16. If a resident's TTP is less than the resident's allowance for utilities, pay the resident a utility reimbursement, i.e., the difference between the TTP and the allowance for utilities. The PHA's present utility allowances, by development, and by bedroom size, are listed in Appendix B.
17. Utility Reimbursement. The PHA has the option to pay the utility reimbursement to the family or directly to the utility company.
18. When a resident makes application for utility service in his/her own name, he/she shall sign a third-party notification agreement so that the PHA will be notified if the resident fails to pay the utility bill.

B. Reasonable Accommodation of Residents with Disabilities

Upon a request from a family that includes a disabled or elderly person, the PHA will approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR Part 8 to make the program accessible to and useable by the family with a disabled family member.

Residents with disabilities will not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.

CHAPTER 17. Dwelling Lease

A. Dwelling Lease Term, Renewal, Modification and Termination

Each dwelling lease has a twelve (12) month term which will automatically be renewed for all purposes except non-compliance by an adult member with the community service requirements.

1. The PHA incorporates the regulatory provisions in all leases for dwelling units assisted under the U. S. Housing Act of 1937, as amended, in developments owned by or leased to the PHA and leased or sublet to residents.
2. The PHA can modify the lease, and any other documents referenced therein, at any time during the lease term provided that the PHA provides the required notice to residents and resident organizations and considers their comments before adopting the new dwelling lease.
3. The lease may be modified at any time by written agreement of the resident and the PHA.
4. The PHA may terminate tenancy if the resident refuses to accept a revision to the lease after being given at least sixty (60) days' notice of its proposed effect and being allowed a reasonable time to respond to the offer.

B. Policies

The dwelling lease policies are implemented for each resident as follows:

1. At admission, for new residents;
2. At the next regularly scheduled reexamination of income, for present residents;
3. Immediately, for any resident so requesting, whose next regularly scheduled reexamination of income is later than six (6) months after the date of adoption;
4. At the time of transfer, for any resident moving from one dwelling unit in a development to any other dwelling unit in a development.

C. Thirty (30) day Display and Comment Period

The PHA will provide at least thirty (30) days written notice to residents and resident organizations of any proposed changes in the dwelling lease.

1. Residents and resident organizations can present written comments on the proposed changes to the PHA during this thirty (30) day period. The PHA will take into consideration all comments before adopting any new lease.
2. If any change in the resident's status results in the need to change or amend any provision of the lease, or if the PHA desires to waive a provision with respect to the resident,
 - a) The existing lease is to be canceled and a new lease executed, or
 - b) An appropriate rider is to be prepared and executed by the resident and PHA and made a part of the existing lease.

D. Lease Agreement Contents

The dwelling lease, executed by the PHA and each adult resident of a dwelling unit, will contain the provisions with respect to the following subjects:

1. Description of Parties and Dwelling Units
2. Members of the Household
3. Rental Payments, Late Charges, Lease Term and Renewal
4. Security Deposit
5. Redetermination of Rent, Dwelling Size and Eligibility
6. Occupancy of the Dwelling Unit and Resident Obligations, including Community Service Requirements
7. PHA Obligations
8. Defects Hazardous to Life, Health and Safety
9. Entry of the Dwelling Unit during Occupancy
10. Utilities
11. Maintenance, Repairs and Services
12. Abandonment and Abandoned Property
13. Notices
14. Notice Procedures
15. Termination of Lease
16. Grievance Procedures
17. Modification of the Lease
18. Accommodation of Persons with Disabilities
19. Warranties and Representation of the Resident
20. PHA's Commitment to Investigate Misrepresentations and Pursue Remedies
21. Solicitation, Trespassing and Exclusion of Non-Residents

E. Additional Lease Provisions

1. Persons convicted of manufacturing or producing amphetamine on the premises of public housing will have their assistance permanently terminated.
2. Any person residing in public housing identified by the PHA as having fled to avoid prosecution, custody or confinement after a conviction of a felony, and/or in violation of a condition of probation or parole imposed under Federal or State law will have their lease terminated.
3. The PHA will notify the Post Office of any family evicted for criminal and/or drug/alcohol abuse.

F. Specific Data Required

1. Each lease shall specify:
 - a) The unit to be occupied,
 - b) The date of admission,
 - c) The size of the unit to be occupied,
 - d) All family members who will live in the unit,
 - e) The TTP or Tenant Rent (whichever is applicable),
 - f) Security deposit to be charged, the utility allowances, other charges under the lease,
 - g) The terms of occupancy.
2. It shall be explained in detail to the applicant and his/her family before he/she executes the lease.
3. The lease shall be kept current at all times.
4. The Head of Household of each family accepted as a resident is required to execute a lease agreement prior to actual admission.
5. All household members eighteen (18) years of age or older will be required to sign the lease.
6. One copy of the lease will be given to the lessee and the original will be filed as part of the permanent records established for the family.

G. Termination of Lease

Termination of the lease will be in accordance with the provisions of the lease the resident has signed.

CHAPTER 18. Reexaminations

To assure that residency in public housing is restricted to families meeting the eligibility requirements for continued occupancy and that such families are charged appropriate rents.

1. **Income-Based Rent:** For families who are paying income-based rent, the PHA must conduct a reexamination of family income, composition and compliance with community service and self-sufficiency requirements at least annually (every 12 months). The PHA shall make the appropriate adjustments in the family rent after consultation with the family and verification of the family's annual reexamination information.
2. **Flat Rent:** For families who are paying flat rent, the PHA must conduct a reexamination of family composition, compliance with community service and self-sufficiency requirements, and other criteria related to continued occupancy at least annually (every 12 months). The PHA must conduct a reexamination of family income at least once every three years.

At its discretion, the PHA may establish a policy requiring reexaminations of families paying flat rent at more frequent intervals, but not more frequently than annually unless the family requests a reexamination based on hardship circumstances

3. The PHA may require the family to move to an appropriate unit size based on the results of the reexamination.
4. If the family fails to participate in the reexamination interview and/or fails to provide information required by the PHA, the PHA may establish the family's rent based upon local market rents or actual operating cost, whichever is higher, until the matter is resolved, or the PHA may terminate the family from the public housing program.

A. General Redetermination Requirements

The following requirements apply to all residents.

1. If the resident requests to add a new member(s), the resident must disclose the SSN of the new member to be added and provide documentation of the SSN to the PHA. Disclosure and documentation for the new member to be added must be provided at the time of request to add new household member.

The new household member cannot be added to the family composition until the family has complied with the SSN disclosure and documentation requirements.

2. The effective date of an annual reexamination requires a thirty (30) day notice prior to the effective date. Rent increases or decreases are always effective the first day of the month.
3. Community Service and Self-Sufficiency Requirement (CSSR)

Community Service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

- a) The Quality Housing and Work Responsibility Act 1998 mandates that each non-exempt adult family member (18 years old or older) who resides in public housing must contribute either eight (8) hours of community service per month or participate in an economic self-sufficiency program for eight (8) hours per month, or perform a combination of eight (8) hours of community service and participation in an economic self-sufficiency program per month.

The required community service contribution or self-sufficiency participation, or combination of both activities, may be completed at 8 hours each month or aggregated throughout the year, as long as 96 hours is completed by each annual reexamination.

- b) The effective date of participation for all non-exempt family members is the date the family executes the lease containing the CSSR requirement. New admissions, as well as families in occupancy, are affected by this requirement.
- c) The PHA will provide written notice to all applicants and residents of the CSSR requirement and describe the process to determine which family members are exempt from the requirement and the process to change the exemption status of family members.
- d) The PHA will administer the CSSR requirement directly.
 - (1) The PHA will provide names and contact information of agencies offering opportunities for residents, including persons with disabilities, to comply with the CSSR requirements.
 - (2) The PHA will coordinate with social service agencies, local schools, and human service offices to develop a referral list of names and agency contacts.
 - (3) PHAs that administer a ROSS or Family Self-Sufficiency (FSS) program will not partnership with the Program Coordinating Committee.

The PHA will create an agreement with the local organizations to allow the organizations to advertise their program, assist with transportation, child care or other barriers and be able to verify the CSSR hours completed by the non-exempt family members.

- e) Community Service Activities: The PHA will provide guidance and a list of acceptable activities or advance approval of a community service activity to avoid the possibility of refusing to recognize the activity as eligible after the non-exempt family member performs it.
 - (1) Eligible community service activities include, but are not limited to:
 - a. Local public or nonprofit institutions, such as schools, Head Start Programs, before-or after-school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult daycare programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing);
 - b. Nonprofit organizations serving PHA residents or their children, such as: Boy or Girl Scouts, Boys or Girls Club, 4-H Clubs, Police Activities League (PAL), organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Centers, community clean-up programs, beautification programs;
 - c. Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels;

- d. Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods or performing arts;
- e. PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board, outreach and assistance with PHA-run self-sufficiency activities including supporting computer learning centers; and,
- f. Care for the children of other residents so parents may volunteer.
- g. The PHA may coordinate the ROSS and Family Self-Sufficiency Program Individual Training and Services Plan (ITSP) with CSSR.
 - 1. The PHA may include specific self-sufficiency activities into the ITSP;
 - 2. The PHA may consider regular meetings with ROSS and FSS coordinator as CSSR activities.
 - 3. ROSS and FSS coordinators may verify community service hours within the non-exempt family member's monthly logs

The PHA will not accept community services activities performed at for profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based community service.

The PHA will not substitute community service activity performed by a non-exempt family member for work ordinarily performed by a PHA employee. The non-exempt family member may perform community service on PHA property or with or through PHA programs to assist with or enhance work done a PHA employee.

- f) Economic Self-Sufficiency Activity: Is any program designed to encourage, assist, train, or facilitate the economic independence of assisted families or to provide work experience for such families. It includes any work activities as defined in the Social Security Act.

(1) Eligible economic self-sufficiency activities include, but are not limited to:

- a. Job readiness or job training while not employed;
- b. Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers;
- c. Higher education (junior college or college);
- d. Apprenticeships (formal or informal);
- e. Substance abuse or mental health counseling;
- f. Reading, financial and/or computer literacy classes;
- g. English as a second language and/or English proficiency classes;
- h. Budgeting and credit counseling.

- g) Exempt Residents: The following family members are exempted from the CSSR requirements:
- (1) The elderly, age sixty-two (62) years of age or older;
 - (2) Blind or disabled as defined under law and who certify that because of this disability, he/she is unable to comply with the CSSR requirement;
 - a. Existing documentation will be accepted as evidence of disability; however, disabled family members are not automatically exempt from the requirement.
 - (3) A family member who is the primary caretaker for someone who is blind or disabled.
 - (4) An adult family member engaged in work activities. The PHA will consider twenty (20) hours per week as the minimum number of hours for a work activity.
 - a. The non-exempt family member must be participating in one of the following work activities:
 1. Unsubsidized employment;
 2. Subsidized private-sector employment;
 3. Subsidized public-sector employment;
 4. Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
 5. On-the-job-training;
 6. Job-search;
 7. Community service programs;
 8. Vocational educational training (not to exceed 12 months with respect to any individual);
 9. Job-skills training directly related to employment;
 10. Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; and
 11. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, in the case of a recipient who has not completed secondary school or received such a certificate.
 - (5) A family member who meets the requirements of being exempted for having to engage in a work activity under the State program funded under Part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the PHA is located, including a State-administered Welfare-to-Work program;
 - (6) A family member receiving assistance, benefits, or services under a State program funded under Part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other State welfare program (Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP)) in which the PHA is located, including a State-administered Welfare-to-Work program, and who is in compliance with the requirements of such program.

(7) Change in exempt status:

- a. When a non-exempt family member becomes exempt, it is his/her responsibility to report the change in exempt status and provide documentation to the PHA.
- b. When an exempt family member becomes non-exempt, it is his/her responsibility to report the change in status to the PHA.

The PHA will make the final determination whether to grant an exemption from CSSR. If a resident does not agree with the PHA's determination, the resident has the right to dispute the decision through the grievance process.

- h) At lease execution or annual reexamination all adult family members of a public housing resident family must:
 - (1) Provide documentation, if applicable, that they qualify for an exemption from CSSR; and
 - (2) Sign the CSSR Certification that they have received and read the CSSR Policy and understand that failure to comply with CSSR requirements will result in non-renewal of their lease, unless they are exempt for the CSSR requirement.
 - (3) The effective date of participation of all non-exempt family members is the date the family executes the lease containing the CSSR requirement.
- i) The PHA will verify annually exemptions to the CSSR requirement and completions of the CSSR requirements for non-exempt family members.
 - (1) At least 30 days before the annual reexamination and/or lease expiration, the PHA will review the exempt or non-exempt status and compliance of non-exempt adult family members.
 - (2) At each regularly schedule rent reexamination, each non-exempt family member must present a signed certification, on a form provided by the PHA, of their CSSR activities performed over the previous twelve (12) months.
 - (3) The PHA will obtain third-party verification of the completion of CSSR activity completed outside of the PHA.
- j) The PHA will not evict a family due to non-compliance with CSSR requirements. The PHA will provide a written notification to the family which must include:
 - (1) A brief description of the finding of non-compliance with CSSR.
 - (2) A statement that the PHA will not renew the lease at the end of the current 12-month lease term unless the tenant enters into a written Work-Out Agreement with the PHA or the family provides written assurance that is satisfactory to the PHA explaining that the tenant or other non-compliant resident no longer resides in the unit.

The Work-Out Agreement will include:

 - a. The means which the non-compliant non-exempt family member will comply with the CSSR requirement;
 - b. The number of delinquent CSSR hours;
 - c. How the delinquent hours will be remedied during the next 12 months; and
 - d. The number of hours, if any, that will be required under the new lease.

- k) The PHA will enforce the Work-Out Agreement. If a family refuses to sign or fails to comply with the terms of the written Work-Out Agreement, the PHA will initiate termination of the tenancy at the end of the current 12-month lease. The termination is due to the family's failure to comply with lease requirements.

The PHA will provide the following when initiating the termination of tenancy:

- (1) A thirty (30) day notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease;
 - (2) The tenant's right to request a grievance hearing on the PHA's determination;
 - (3) The tenant's right to exercise any available judicial remedy to see timely redress for the PHA's nonrenewal of the lease because of noncompliance with the CSSR requirements;
 - (4) The tenant's rights to be represented by counsel;
 - (5) Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
 - (6) A decision on the merits.
 - (7) The right to request reasonable accommodations during the grievance process.
4. Tenant Self-Certification for Community Service and Self-Sufficiency Requirement (CSSR)

The PHA will accept a resident's signed self-certification of compliance with the Community Service and Self-Sufficiency Requirement. The PHA will obtain third-party verification of CSSR completion administered through an outside organization. A copy of the CSSR self-certification form and supporting documents will be filed in the resident's file. The PHA will notify residents that CSSR self-certifications may be subject to verification audits.

5. Adjustments resulting from changes in welfare benefits will be handled as follows:
- a) A family's loss of welfare benefits due to the expiration of the lifetime time limit is not considered as fraud or noncompliance with economic self-sufficiency requirements. The PHA will lower the family's rent.
 - b) A family whose welfare benefits are reduced because of fraud or noncompliance with economic self-sufficiency requirements will not have its rent reduced.
 - c) A welfare agency may reduce welfare benefit payments to sanction a family for non-compliance with welfare self-sufficiency or work activities requirements. The rental contribution of a family assisted in the public housing program may not be reduced for this reason. The law requires that family income include the amount of the welfare benefits that would have been paid if not for the welfare agency sanction. For purposes of this section, the PHA will use the "imputed welfare income" (see definitions) to determine the family's annual income.
 - d) A family's annual income includes the imputed welfare income plus the total amount of other annual income; however, the amount of imputed annual income is offset by income from other sources received by the family that start after the sanction is imposed.

- e) The family's rent will not be adjusted until the basis for the reduction is confirmed through third-party verification and the return envelope will be retained in the resident's file. At the request of the PHA, the welfare agency is to inform the PHA in writing of the amount and term of any specified welfare benefit reduction and the reason for such reduction. Therefore, the PHA is entitled to base its imputed income on the information provided to it by the welfare agency and is not responsible for confirming the accuracy of the welfare agency's calculation.
 - f) The PHA must make its best effort to enter into cooperation agreements with welfare agencies to comply with this requirement.
 - g) If a family claims that the PHA has not correctly calculated the amount of the imputed welfare income, and if the PHA denies the family's request to modify such amount, the PHA will notify the family in writing with a brief explanation of the basis for their determination. The notice must state that the family has the right to a hearing through the PHA's Grievance Procedures without paying a deposit in escrow.
6. If the PHA determines that a resident has falsified or misrepresented family income, composition, circumstances, conduct or behavior, the PHA will:
- a) Require the resident to pay the difference between the TTP the resident is currently paying and the TTP the resident should have been paying;
 - b) Evict the resident in accordance with state law and HUD regulations; or
 - c) Take such other remedial action as the PHA may deem necessary under pertinent HUD and PHA laws, rules and regulations.
7. The family must have demonstrated satisfactory past performance in meeting financial obligations, especially rent.
8. The family must have no record of the disturbance of neighbors, destruction of property, or living or housekeeping habits that adversely affect the health, safety, or welfare of other residents.
9. The family must have no history of criminal activity involving crimes of physical violence to persons or property or other drug-related criminal acts or evidence of a pattern of alcohol abuse which adversely affect the health, safety, or welfare of other residents.
10. If at the time of redetermination, or at any time during occupancy, it is determined by the PHA that any household member has been convicted of manufacturing or producing methamphetamine on the premises of any federally assisted housing, the family is required to have its assistance permanently terminated. Such termination is not subject to the PHA's Grievance Procedures.
11. The family may request an interim redetermination of income or composition based on any changes since the last determination.
- a) The PHA will conduct the redetermination within five (5) working days of the request.
 - b) The PHA has a policy on income level changes which must be reported and when rent adjustments will be made. (See Fixed Rent System later in this Section.)
12. Any change in income resulting from the redetermination is annualized, even if the income is not expected to last for a full year. If the income changes again, the new amount of monthly income will be annualized again.

13. If at the time of annual recertification a family's present conditions of employment are too unstable to project the adjusted income for the coming twelve (12)-month period for the purpose of determining TTP, a special reexamination will be scheduled.
- a) This special reexamination will take place on a date by which the PHA estimates that the family's circumstances will be stable.
 - b) If at the time of such special reexamination it is still not possible to make a reasonable estimate of the adjusted income, the PHA will continue to schedule special reexaminations until such time as a reasonable estimate of the adjusted income can be made.
 - c) Rent increases determined at special reexaminations shall be made effective the first of the second month following the final determinations.

B. Permissible Deductions

The PHA has elected to have a permissible deduction for payment of child support.

C. Interim Rent Adjustments: Interim RentSystem

1. Rent Adjustments

Residents must report all changes in family composition and/or income, in writing, to the management within ten (10) calendar days of the occurrence. Failure to report within the ten (10) calendar days may result in a retroactive rent charge.

PHA will process interim changes in rent in accordance with the chart below:

INCOME CHANGE CHART	
Income Change	PHA Action
Decrease in income for any reason except for decrease that lasts less than 30 days.	The PHA will process an interim adjustment in rent. An interim adjustment will not be processed if the decrease will last less than 30 days.
Increase in earned income due to the employment of a formerly unemployed current household member who is not qualified for the 24-month earned income disallowance.	The PHA will process an interim rent adjustment. This rent increase will be effective on the first day of the second month following the income increase.
Increase in unearned income.	The PHA will process an interim rent adjustment. This rent increase will be effective on the first day of the second month following the income increase.
Increase in income because a person with income (from any source) joins the household.	The PHA will process an interim rent adjustment. This rent increase will be effective on the first day of the second month following the income increase.
Increase in earned income due to a current increase or change of employment of a current household member.	The PHA will process an interim rent adjustment. This rent increase will be effective on the first day of the second month following the income increase.
Increase in income due to start of a new source of unearned income.	The PHA will process an interim re-adjustment effective the first of the second month following receipt of new unearned income to household.

Increase in earned income subject to the 24-month disallowance.	The PHA will exclude 100% of the qualified increase for 12 months and 50% of the qualified increase for an additional 12 months. The combined exclusion periods may not exceed a total of 24 months. The PHA will process interim re-certifications to be effective on the 13 th month after each exclusion period.
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2. Residents with seasonal or part-time employment of a cyclical nature will be asked for third-party documentation of the circumstances of their employment including starting and ending dates.
3. The PHA will process an interim adjustment in rent if it is found that the resident at an annual or interim reexamination has misrepresented the facts upon which the rent is based so that the rent the resident is paying is less than the rent that he/she should have been charged. The PHA will apply any increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.
4. Complete justification and verification of the circumstances applicable to rent adjustments must be documented by the resident and approved by the Executive Director and/or his/her designee.
5. The PHA will process interim adjustments in rent accordance with the following policy:
 - a) When a decrease in income is reported, and the PHA receives confirmation that the decrease will last less than thirty (30) days, an interim adjustment will not be processed.
 - b) Residents reporting decreases in income that are expected to last more than thirty (30) days will have an interim adjustment processed.
6. Residents granted a reduction in rent under these provisions might be required to report for special reexaminations at intervals determined by the Housing Manager. Reporting is required until the circumstances cease or until it is time for the next regularly scheduled reexamination, whichever occurs first. If family income increases during this time, the rent will be increased accordingly. A fully documented record of the circumstances and decisions shall be included in the resident's folder.
7. Residents will be notified in writing of any rent adjustment and such notice will state the effective date of the adjustment.
8. Rent decreases go into effect the first month following the PHA's verification of the reported change. Failure to report a decrease will not result in retroactive action.
9. Rent increases (except those due to misrepresentation) require thirty (30) days' notice.

D. Failure to Report Accurate Information

If it is found that the resident has misrepresented or failed to report to management the facts on which his/her rent is based so that the rent being paid is less than what should have been charged, then the increase in rent will be made retroactive. Failure to report accurate information is also grounds for initiating eviction proceedings in accordance with the PHA's dwelling lease.

E. Preservation of Mixed Families-Calculation of Rent

The following types of assistance are available only to families who were assisted as of June 19, 1995. These types of assistance would be offered a family during the reexamination process if the family contends that one or more family members do not have eligible immigration status or that no family members have status. The assistance may also be offered when the appeals process with CIS and the Grievance Procedures with the PHA have all been exhausted.

1. Continued Assistance

Continued assistance is available to a mixed family only if all of the following conditions are met:

- a) The family was receiving assistance under a Section 214 covered program on June 19, 1995;
- b) The family's head of household or spouse has eligible immigration status; and
- c) The family does not include any person (who does not have eligible immigration status) other than:
 - (1) The head of household;
 - (2) Any spouse of the head of household;
 - (3) Any parents of the head of household;
 - (4) Any parents of the spouse; or
 - (5) Any children of the head of household or spouse.

For continued assistance only, children who are only under guardianship or who are stepchildren, but not natural children of either the head of household or spouse, do not meet the criteria of child for this restricted definition of family.

Continued assistance means the family's rent is calculated in the same manner as a family where all members are eligible. Families who do not qualify for continued assistance will be offered either prorated assistance or temporary deferral of termination of assistance as outlined in this policy.

2. Proration of Assistance

Prorated assistance applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible family who requests prorated assistance must be provided prorated assistance.

The PHA shall prorate the mixed family's rent using the following Steps:

Step 1: Determine the Total Tenant Payment (TTP).

The TTP will be the highest of the following amounts:

- a) 30 percent (30%) of the family monthly adjusted income;
- b) 10 percent (10%) of the family's monthly income; or
- c) The minimum rent

Annual income includes income of all family members, including any family member who has not established eligible immigration status.

Step 2: The Family Maximum Rent is equal to the applicable flat rent for the unit size to be occupied by the family.

Step 3: Subtract the TTP from the PHA-established flat rent applicable to the unit.

The result is the Maximum Subsidy for which the family could qualify if all members were eligible ("Family Maximum Subsidy").

Step 4: Divide the Family Maximum Subsidy by the number of person is the family (all persons) to determine the Maximum Subsidy per each family member who has citizenship or eligible immigration status ("Eligible Family Member").

The subsidy per eligible family member is the "Member Maximum Subsidy."

Step 5: Multiply the Member Maximum Subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

The product of this calculation is the amount of subsidy for which the family is eligible ("Eligible Subsidy").

Step 6: The mixed family TTP is the Maximum Rent minus the amount of the Eligible Subsidy.

When the mixed family's TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP.

Step 7: The PHA subtracts from the mixed family TTP any established utility allowance, and the sum become the Mixed Family Rent.

3. Temporary Deferral of Termination of Assistance

Temporary deferral of termination of assistance is available to a mixed family who qualifies for prorated assistance, and does not qualify for continued assistance, but decides not to accept prorated assistance. Temporary deferral of termination of assistance is available to a family who has no family members with eligible status. The deferral period is to allow the family time for the orderly transition of those family members who are ineligible, and any other family members involved, to seek other affordable housing.

- a) The family will be given written notice on the PHA's decision concerning the family's qualifications for assistance under this section. If the family is not eligible for assistance under this section, the notification will state the reasons, based on relevant factors. Resident families will be notified of any applicable appeal rights.
- b) For purposes of temporary deferral of termination of assistance, affordable housing is defined as:
 - (1) Unassisted;
 - (2) Not substandard;
 - (3) An appropriate size for the family; and
 - (4) Can be rented for an amount not to exceed the amount that the family pays for rent, including utilities, plus twenty-five percent (25%).

The process for the PHA and family is as follows:

- c) The PHA will notify the family that the family has chosen temporary deferral of termination of assistance or that there are no eligible family members and therefore, the family only qualifies for temporary deferral of termination of assistance. The family will be notified that they are ineligible for financial assistance and the PHA will offer the family information concerning and referrals to assist in finding other affordable housing.
- d) The family will initially be given a maximum of six (6) months to seek affordable housing as defined above.
- e) The initial period may be renewed for additional periods of six (6) months, but the aggregate deferral period shall not exceed eighteen (18) months.
- f) Prior to the end of the deferral period, the PHA must:
 - (1) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions that when taken together will demonstrate an inadequate supply of affordable housing. The determination will include the PHA's knowledge of the local housing market and the resident family's search for appropriate housing.
 - (2) At least sixty (60) days prior to the expiration date of the deferral period, the family will be notified in writing that:
 - (a) The termination will be deferred for another six (6) months and that there was a determination made that there is no affordable housing (providing the extension will not exceed an aggregate of 18 months); or
 - (b) The termination of financial assistance will not be deferred because either the aggregate period of eighteen (18) months has been reached or that a determination has been made that there is affordable housing available.
 - (c) The eighteen (18) month time limit is effective November 26, 1996 and does not apply to those families under the original three (3) year limitation.
- g) The family has a choice to request prorated assistance at the end of the temporary deferral of assistance period if a good faith effort has been made to locate affordable housing and there is at least one family member with eligible immigration status.

CHAPTER 19. Family Debts to the PHA

A. Repayment Agreement for Families

A Repayment Agreement is a document entered into between the PHA and a person (i.e., applicant, tenant, previous tenant) who owes a debt to the PHA. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of repayment, special provisions of the agreement, and the remedies available to the PHA upon default of the agreement.

1. The PHA allows for the establishment of a repayment agreement if the family owes the PHA retro-active rent due to any of the following:

- a) Delinquent charges for damages
- b) Retroactive rent
- c) Under-reported income

A repayment agreement will be executed between the PHA, the head of household and spouse, and include any other adult household member who falls into any of the above categories for owing retro-active rent to the PHA.

2. Repayment Agreement with Current Tenant Family

- a) The tenant shall be required to pay retroactive rent resulting from the tenant being charged less rent than required by HUD's rent formula due to, among other things, tenant's underreporting or failure to report income.
- b) The PHA shall determine the retroactive rent amount as far back as the PHA is able to document the family's unreported or underreported income, unreported changes, or other misrepresented income or family circumstances.
- c) Upon determination of the retroactive rent amount, the family shall be required to pay the retro-active rent in full or enter into a Repayment Agreement. If the tenant refuses to enter into a repayment agreement or fails to make payments on the repayment agreement, the PHA shall terminate the family's tenancy.
- d) The Repayment Agreement shall clearly state the amount of the total retroactive rent amount payable by the tenant to the PHA in addition to the family's regular monthly rent.
- e) The repayment time period in which the retroactive rent balance is to be paid to the PHA shall be based on the determined monthly repayment amount and the original retroactive balance. The PHA shall have full discretion in establishing the number of months in the repayment agreement for the family to pay the debt. The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. However, PHAs have the discretion to establish thresholds and policies for repayment agreements in addition to HUD required procedures.
- f) A minimum rent hardship exemption previously granted to a family owing retro-active rent will be automatically revoked and the family will be required to pay the retro-active

rent in full or enter into a repayment agreement for any retroactive rent owed, including rent owed during the hardship exemption period.

- g) The PHA is required to and therefore shall report the terms of the executed repayment agreement and any unpaid debts to the PHA to the U. S. Department of Housing and Urban Development.

3. Repayment Agreement with Previous Public Housing Tenant or Section 8 Program Participant

In some instances a family who was previously on a federally assisted housing program moved owing the PHA or some other PHA a debt.

- a) If such a family applies for housing and during the application process it is found that the applicant was a previous tenant/participant who left owing a debt, the PHA will require the applicant to pay the debt in full or enter into a Repayment Agreement to clear the debt.
- b) The repayment agreement shall be established as stated in 'b' through 'f' above.
- c) If the applicant owes any other housing authority a debt the PHA will require the applicant to provide documentation from the other PHA that the debt has been satisfactorily paid.

4. Late Payments

Late and missed retroactive rent payments by the family shall constitute default of the repayment agreement.

- a) A payment will be considered to be in arrears if the payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be the close of the next business day.
- b) If the family's repayment agreement is in arrears, the PHA may:
 - (1) Require the family to pay the balance in-full;
 - (2) Pursue civil collection of the balance due; and
 - (3) Terminate the tenancy if the balance is not paid.

5. There are some circumstances in which the PHA will not enter into a repayment agreement. These are as follows:

- a) If the family already has a repayment agreement in place;
- b) If the PHA determines that the family has committed program fraud.

6. Guidelines for Repayment Agreements

- a) No transfer will be approved until the debt to the PHA is paid-in-full, unless the move is the result of the following causes, and the repayment agreement is current:
 - (1) Family size exceeds the maximum occupancy standards;
 - (2) A natural disaster;
 - (3) Verified evidence of family violence/spousal or child abuse;
 - (4) Protection of witnesses to violent crime as verified by a law enforcement agency or District Attorney; and

(5) Victim of hate crimes.

- b) If a request to transfer is denied, the family will be advised in writing of the reasons therefore, and advised of their right to request an informal hearing.

7. Additional Monies Owed

If the family has a repayment agreement in place and incurs an additional debt to the PHA:

- a) The PHA will demand payment of the new debt in-full within ninety (90) days if the repayment plan the family is already under is current.
- b) The PHA will not enter into more than one repayment agreement at a time with the same family.
- c) If a repayment agreement already in place is in arrears more than five (5) days, any new debts must be paid-in-full by the first of the second month following the assessment of the debt. Failure to meet these time frames will result in the PHA issuing a notice to terminate.

B. Remaining Family Members and Prior Debt

- 1. As a party to the lease, remaining members of a resident family (other than head or spouse) eighteen (18) years of age or older will be responsible for any back rent, charges or other indebtedness incurred by the former head or spouse.
- 2. Remaining family members under the age of eighteen (18) shall not be held responsible for any back rent incurred by the former head of household.

C. Debts Due to Fraud/Non-Reporting of Income

HUD's definition of program fraud and abuse is a single act or pattern of actions that constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead.

D. Family Error/Late Reporting

Families who owe money to the PHA due to the family's failure to report increases in income will be required to repay, in accordance with the repayment policies for program fraud (See following paragraph).

E. Program Fraud

- 1. Families who owe money to the PHA due to program fraud will be required to repay it in accordance with the repayment policies for program fraud below.
- 2. Where appropriate, the PHA may refer the case for criminal prosecution.

F. Repayment Policies for Program Fraud

Families who commit program fraud (or untimely reporting of increases in income) will be subject to the following:

- 1. Time period for a repayment agreement shall be determined on a case-by-case basis and shall be based upon:
 - a) Type and nature of the fraud;

- b) Ability to make repayment; and
 - c) Amount of repayment.
2. The family may be required to pre-pay any of the amount owed prior to, or upon the execution of, the repayment agreement.
 3. The minimum monthly payment shall be appropriate considering the requirement of the PHA and items 1.a., 1.b., and 1.c. above.

G. Writing-off Debts

Debts will be written off if:

1. The debtor's whereabouts are unknown and the debt is more than one (1) year old;
2. The debtor is deceased; or
3. The debt has been determined uncollectible.

Writing a debt off the books does not relieve the former tenant from its obligation to pay. The debt will be reported to HUD. If the family applies for housing assistance in the future, the debt must be cleared before the application will be approved.

CHAPTER 20. Program Integrity

A. Investigation of Suspected Abuse and Fraud

The PHA will initiate an investigation of a participating family in the event of one or more of the following circumstances:

1. Referrals, Complaints or Tips. The PHA will follow up on referrals from other agencies, companies or persons which are received by mail, by telephone or in person, which allege that a family is in non-compliance with, or otherwise violating the lease or any other program rules.
 - a) Such follow-up will be made providing that the referral contains at least one item of information that is independently verifiable.
 - b) A copy of the allegation will be retained in the resident's file.
 - c) Anonymous complaints will be investigated if the information received contains specific allegations that can be independently verified.
 - d) If the anonymous complaint is not specific, the information will be retained in files, but will not be used to initiate investigations.
2. Internal File Review. A follow-up will be made if PHA staff discovers (as a function of a certification or recertification, an interim redetermination, or a quality control review), information or facts which conflict with previous file data, the PHA's knowledge of the family, or deviates from statements made by the family.
3. Verification or Documentation. A follow-up will be made if the PHA receives up-front verification, independent verification or documentation that conflicts with representations in the family's file (such as public record information, or credit bureau report, or reports from other agencies).

B. Steps to Detect Program Abuse and Fraud

1. Quality Control File Reviews. On a random basis (at least 5% of files processed each month) resident files will be reviewed for accuracy and completeness. A knowledgeable staff member who was not directly involved in the processing of that applicant/resident file will complete these reviews. Such reviews shall include, but are not limited to:
 - a) Assurance that verification of all income and deductions is present;
 - b) Changes in reported Social Security Numbers or dates of birth are noted;
 - c) File documents are authentic and, where applicable, are signed and dated;
 - d) Ratio between reported income and expenditures is accurately computed; or
 - e) Signatures are consistent with previously signed file documents.
2. The PHA staff (to include inspection and maintenance personnel) will maintain high awareness of circumstances that may indicate program abuse or fraud, such as unauthorized persons residing in the household and indications of unreported income. The observations will be documented in the family's PHA file.

3. Credit Bureau inquiries may be made (with proper authorization by the resident) in the following circumstances:
 - a) At the time of the final eligibility determination if the information provided by the applicant conflicts with information obtained through outside sources or third-party verifications.
 - b) When the PHA receives an allegation wherein unreported income sources are disclosed.
 - c) When a participant's expenditures exceed his/her reported income and no plausible explanation is given.

C. Handling of Allegations of Possible Abuse and Fraud

The PHA will review allegations that contain one or more independently verifiable facts.

1. An internal file review will be conducted to determine:
 - a) If the subject of the allegation is a resident of the PHA and, if so, to determine whether or not the information reported has been previously disclosed by the family.
 - b) It will then be determined if the PHA is the most appropriate authority to do a follow-up (more so than police or social service). Any file documentation of past behavior, as well as corroborating complaints, will be evaluated.
2. If, at the conclusion of the preliminary file review, there is/are fact(s) contained in the allegation which conflict with file data, and the fact(s) are independently verifiable, the staff will initiate an investigation to determine if the allegation is true or false.

D. Investigations of Allegations of Abuse and Fraud

If the PHA determines that an allegation or referral warrants follow-up, the staff person who is responsible for the file will conduct the investigation. The steps taken will depend upon the nature of the allegation and may include the items listed below. In all cases, the PHA will secure the written authorization from the resident for the release of information.

1. Credit Bureau Inquiries (CBI). In cases involving previously unreported income sources, a CBI may be made to determine if there is financial activity that conflicts with the reported income of the family.
2. Verification of Credit. In cases where the financial activity conflicts with file data, a Verification of Credit form may be mailed to the creditor in order to determine the unreported income source.
3. Employers and Ex-Employers. Employers or ex-employers may be contacted to verify wages that may have been previously undisclosed or misreported.
4. Neighbors/Witnesses. Neighbors and/or other witnesses may be interviewed if it is believed that they have direct or indirect knowledge of facts pertaining to the PHA's review.
5. Other Agencies. Investigators, caseworkers or representatives of other benefit agencies may be contacted.
6. Public Records. If relevant, the PHA will review public records kept in any jurisdictional courthouse. Examples of public records which may be checked are: real estate, marriage, divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.

7. *Interviews with Head of Household or Other Family Members*. The PHA will discuss the allegation (or details thereof) with the head of household or family member by scheduling an appointment at the PHA office.

The PHA staff person who conducts such interviews will maintain a high standard of courtesy and professionalism. Management will not tolerate inflammatory language, accusations, or any unprofessional conduct or language under any circumstances. If possible, an additional staff person will attend such interviews.

E. Evidence and Statements Obtained by the PHA

Documents and other evidence obtained by the PHA during the course of an investigation will be kept in the resident's file, or in a separate "work file."

F. Evaluation of the Findings

1. If it is determined that a program violation has occurred, the PHA will review the facts to determine:
2. The type of violation (procedural, non-compliance, fraud);
3. Whether the violation was intentional or unintentional;
4. What amount of money (if any) is owed by the resident;
5. If the family is eligible for continued occupancy.

G. Action Policies for Violations that Have Been Documented

Once a program violation has been documented, the PHA will propose the most appropriate remedy based upon the type and severity of the violation.

1. **Procedural Non-Compliance.** This category applies when the resident "fails to" observe a procedure or requirement of the PHA, but does not misrepresent a material fact, and there is no retroactive rent owed by the family.
 - a) Examples of non-compliance violations are:
 - (1) Failure to appear at a pre-scheduled appointment; and
 - (2) Failure to return verification in the time period specified by the PHA.
 - b) **Warning Notice to the Family.** In such cases, a notice will be sent to the family that contains the following:
 - (1) A description of the non-compliance and the procedure, policy or obligation, which was violated;
 - (2) The date by which the violation must be corrected, or the procedure complied with;
 - (3) The action, which will be taken by the PHA if the procedure or obligation is not complied with by the date specified by the PHA; or
 - (4) The consequences of repeated (similar) violations.
2. **Procedural Non-Compliance, Retroactive Rent.** When the family owes money to the PHA for failure to report changes in income or assets, the PHA will issue a Notification of Unpaid Rent. This notice will contain the following:
 - a) A description of the violation and the date(s);

- b) Any amounts owed to the PHA;
- c) A ten (10) business days' response period;
- d) The right to disagree and to request an informal hearing with instructions for the request of such hearing.
 - (1) The Resident Fails to Comply with PHA's Notice. If the resident fails to comply with PHA's notice, and a material provision of the lease has been violated, the PHA will initiate termination of tenancy.
 - (2) The Resident Complies with PHA's Notice. When a resident complies with the PHA's notice, the staff person responsible will meet with him/her to discuss and explain the lease provision that was violated. The staff person will complete a Tenant Counseling Report, give one copy to the family and retain a copy in the resident's file.

H. Misrepresentations

When a resident falsifies, misstates, omits, or otherwise, misrepresents a material fact which results (or would have resulted) in an underpayment of rent by the resident, the PHA will evaluate whether or not the resident had knowledge that his/her actions were wrong, and whether the resident willfully violated the lease or the law.

1. Knowledge that the action or inaction was wrong. This will be evaluated by determining if the resident was made aware of program requirements and prohibitions. The resident's signature on various certifications, Personal Declaration and Things You Should Know are adequate to establish knowledge of wrongdoing.
2. The resident willfully violated the law. Any of the following circumstances will be considered adequate to demonstrate willful intent:
 - (1) An admission by the resident of the misrepresentation;
 - (2) The act was done repeatedly;
 - (3) A false name or Social Security Number was used;
 - (4) There were admissions to others of the illegal action or omission;
 - (5) The resident omitted material facts, which were known to him/her (e.g., employment of self or other household members);
 - (6) The resident falsified, forged or altered documents; and
 - (7) The resident uttered and certified to statements at a rent (re) determination, which were later independently verified to be false.

I. The Tenant Conference for Serious Violations and Misrepresentations

When the PHA has established that material misrepresentation(s) has occurred, a Tenant Conference will be scheduled with the family representative and the PHA staff person who is most knowledgeable about the circumstances of the case.

1. This conference will take place prior to any proposed action by the PHA. The purpose of such conference is to review the information and evidence obtained by the PHA with the resident, and to provide the resident an opportunity to explain any documented findings which conflict with representations in the resident's file. The PHA will take into

consideration any documents or mitigating circumstances presented by the resident. The resident will be given five (5) business days to furnish any mitigating evidence.

2. A secondary purpose of the Tenant Conference is to assist the PHA in determining the course of action most appropriate for the case. Prior to the final determination of the proposed actions, the PHA will consider:
 - a) The duration of the violation and number of false statements;
 - b) The resident's ability to understand the rules;
 - c) The resident's willingness to cooperate and to accept responsibility for his/her actions;
 - d) The amount of money involved;
 - e) The resident's past history; and
 - f) Whether or not criminal intent has been established.

J. Disposition of Cases Involving Misrepresentation

In all cases of misrepresentation involving efforts to recover monies owed, the PHA may pursue, depending upon its evaluation of the criteria stated above, one or more of the following actions:

1. **Criminal Prosecution**: If the PHA has established criminal intent, and the case meets the criteria for prosecution, the PHA will refer the case to the local State or District Attorney, notify HUD's Regional Inspector General for Investigation (RIGI), and terminate rental assistance.
2. **Administrative Remedies**: The PHA will terminate assistance and demand payment of restitution in-full.
3. **PHA Legal Action**: If restitution is not made within thirty (30) days and \$1,500.00 or more dollars are owed to the PHA due to participant fraud, the PHA will seek restitution through legal judicial channels.
4. **Continue Assistance**: Contingent upon full lump-sum restitution or minimal term repayment plan **and** warning that repeat of the offense will result in immediate eviction.

K. Notification to Resident of Proposed Action

1. The PHA will notify the resident, by certified mail, of the proposed action no later than three (3) business days after the Tenant Conference.
2. All notices will advise the family of their right to an informal hearing.

CHAPTER 21. Inspections

Inspection of the PHA facilities and its public housing stock is essential to help the housing authority keep on track towards meeting its mission to provide decent, safe, and sanitary housing to its public housing residents. The primary goal in performing routine inspections is to identify necessary corrections before problems become severe, dangerous, or expensive. HUD's Real Estate Assessment Center (REAC) conducts annual physical inspections of the PHA's properties and the ongoing inspections afford the housing authority the opportunity to be better prepared to correct any deficiencies in readiness for the REAC inspections.

The Dwelling Lease provides that the family allow inspection of the dwelling unit upon receipt of forty-eight hour written notice by the PHA. If there is reasonable cause to believe an emergency exists, the PHA will conduct an inspection without advance written notice.

There are several kinds of inspections which are an integral to the PHA in meeting certain required standards as prescribed by HUD. Inspections may include move-in, move-out, housekeeping, annual, quality control, unit condition, suspected lease violation, and preventive maintenance inspections.

PHA residents need to be aware that anytime a PHA employee is present in the resident's unit they are required to document if the "condition" of the unit and the family's housekeeping practices meet the PHA's Housekeeping Standards. The inspections below are conducted with the resident present when possible.

A. Move-In/Move-out Dwelling Unit Inspections

The dwelling unit and the premises should be inspected jointly by the applicant or resident and a member of the PHA staff. The applicant/resident has the option to be present at these inspections. Both parties will agree on the condition of the dwelling unit by signing the completed inspection form. The PHA will keep the original check-sheet and a copy will be given to the applicant or resident.

1. Move-In Inspection: The move-in inspection provides the applicant family moving in and the PHA with a record of the condition of the unit at time of move-in. The move-in inspection provides the PHA staff inspection to record any deficiencies in the "make-ready" work and report to proper department to correct. In addition the inspector can record the equipment provided by the PHA in the unit and verify applicable serial numbers. The completed inspection must be signed by both the PHA inspector and the resident and a copy provided to the resident.
2. Move-Out Inspection: The resident will be given notice of said inspection and encouraged to be present during the inspection. The move-out inspection provides documentation of the current condition of the unit and equipment provided in the unit. The inspection will serve as a guide in determining damages above and beyond normal wear and tear when comparing it to the move-in inspection. In addition, it serves to identify needed maintenance and/or repairs and permits the PHA to schedule timely "make-ready" of the unit for the next occupant.

B. Annual Inspections

The dwelling unit and premises shall be inspected at least annually by the PHA. The Housing Authority is required to conduct the annual inspection in accordance with HUD's Uniform Physical Condition Standards (UPCS). The resident will be given notice of said inspection and encouraged to be present during the inspection. The annual inspection serves as a guide in identify needed maintenance or repairs and to assess any damage above and beyond normal wear and tear. The PHA shall assess charges to the resident for any damage above normal wear and tear.

The inspection form will be kept by the PHA and a copy will be given to the resident if there are deficiencies. Failure of the resident to maintain a safe, decent and sanitary dwelling unit and premises will result in lease termination.

If the unit fails inspection due to housekeeping or tenant caused damages, the resident will be given 10 days to correct the items identified during the inspection, after which a follow-up inspection will be conducted to ensure tenant has corrected the items. The resident may be required to attend housekeeping classes to prevent the possibility of eviction.

C. Time of Inspections

The PHA will inspect the resident's dwelling unit during business hours.

1. Before the resident moves into the unit;
2. Periodically, every month, but not less than annually.
 - a) Follow-up with a Housekeeping Inspection will be made if the resident's housekeeping practices or other circumstances require.
 - b) The PHA will give the resident appropriate notice at least two (2) days before entry, prior to any inspection, in accordance with the dwelling lease;
3. At move-out. The dwelling unit and the premises will be inspected jointly by the resident and a member of the PHA staff, unless the resident has previously vacated the unit without giving notice to the PHA, and is unavailable. In such case, the PHA will inspect the unit independently.
4. At any time that the resident, a PHA employee or other interested person determines that a special inspection is necessary.
5. The PHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists.

If the family needs to reschedule an inspection, they must notify the PHA at 24 hours prior to the scheduled inspection. The PHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection.

CHAPTER 22. Other Matters

The following pertains to requirements and/or references to guidelines for other matters involving admissions and occupancy.

A. Lead-Based Paint Notification and Records

1. Applicants

A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under six (6) years of age will be provided to every applicant family at the time of application.

2. Residents

a) Residents in any PHA-owned low-income public housing developments constructed prior to 1978 will be notified:

- (1) That the property was constructed prior to 1978;
- (2) That the property may contain lead-based paint;
- (3) Of the hazards of lead-based paint;
- (4) Of the symptoms and treatment of lead-based paint poisoning;
- (5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for elimination such hazards); and
- (6) Of the advisability and availability of blood lead level screening for children under six (6) years of age.

b) Residents will be advised to notify the PHA if an elevated blood lead condition is identified so that the PHA can initiate testing and abatement actions, if necessary, or relocate the residents to a lead-free dwelling unit.

3. Records

The PHA will maintain records that provide evidence that the resident and any purchaser of low-income housing developments constructed before 1978 has received the required notification. The signature portion of the notification form will be retained in the PHA's resident file for three (3) years after the resident vacates the dwelling unit.

B. Utility Reimbursement

Where applicable, the PHA will pay the resident a utility reimbursement, as defined in the PHA's Definition section of these policies.

C. Pet Ownership

The dwelling lease establishes the PHA's policy on pet ownership. The PHA has separate policies for family and elderly/disabled Pet Ownership rules.

D. Transfers

The dwelling lease requires the resident to transfer to a dwelling unit of appropriate size, based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available. The PHA has a separate policy on the Transfers and Transfer Waiting List.

E. Collection

The PHA dwelling lease contains the PHA's policies with respect to the amount of rental payments, the due date, and charges for late payment and returned checks.

F. Termination of Lease

The PHA maintains a separate Termination and Eviction Policy for additional guidance.

G. Grievance Procedures

The PHA maintains a Grievance Procedures policy that is incorporated by reference in the lease and is posted in the Management Office.

H. Community Service/Self-Sufficiency Requirements

The PHA has a separate Community Service/Self-Sufficiency Policy.

I. Housekeeping Standards

The dwelling lease establishes the PHA's policy on housekeeping standards. The PHA has separate Housekeeping Standards Policy.

J. Resident Initiatives Policy

The PHA supports resident initiative for all its families. A separate policy has been developed for this program and is incorporated in this document by reference.

K. Preemption of Restrictions on Placement of Direct Broadcast Satellite, Multi-channel Multipoint Distribution Service and Television Broadcast Antennas

1. Under the Telecommunications Act of 1996 as amended effective January 1999 and October 25, 2000, the Federal Communications Commission (FCC) adopted the Over-The-Air Reception Devices Rule regarding restrictions on viewer's ability to receive video programming signals from direct broadcast satellites (DBS), multi-channel multipoint distribution (wireless cable) providers (MMDS) and television broadcast stations (TVBS).
2. This rule prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming.
3. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (any size in Alaska), TV antennas and wireless cable antennas.
4. The rule prohibits most restrictions that:
 - a) Unreasonably delay or prevent installation, maintenance or use;
 - b) Unreasonably increase the cost of installation, maintenance or use; or
 - c) Preclude reception of an acceptable quality signal.

5. The rule applies to acceptable size antennas placed on property that is rented (including public housing) on property which is under the tenant's exclusive use or control (i.e., balconies, patios, designated yard areas, etc.). Local governments and landlords may enforce restrictions that do not impair installation, use or maintenance of these antennas as well as restrictions needed for safety or historic preservation.
6. The PHA will not unreasonably restrict the installation of antennas by residents if:
 - a) The unit has a tenant use only area such as a balcony, patio or designated yard area for which they are solely responsible (mowing, watering, etc.).
 - b) The installation will not block or restrict access or egress to or from the unit or otherwise violate health and safety codes.
 - c) The installation does not result in damage to the unit (i.e., holes in walls or ceiling).
 - d) The installation of an interior antenna does not damage the unit beyond normal wear and tear.
 - e) The resident submits a request in writing asking to install an outside antenna. Inside antennas do not require approval in writing.
 - f) The resident agrees to restore any interior and exterior changes to original condition before vacating the unit. Otherwise, charges for repairs will apply.

The PHA will not assess any fees designed to unreasonably restrict the tenant's right to install antennas as long as the tenant is in compliance with the limitations of this rule.

L. Occupancy of Police Officers

The PHA reserves the right to place Police Officers who would not otherwise be eligible in the PHA's units, if it is determined that their presence would contribute to the safety of and security of residents. The number and location of units and a description of the terms and conditions for them to occupy units is identified in the PHA's annual plan.

M. Fair Housing and Equal Opportunity

A Fair Housing and Equal Opportunity poster that contains information on filing complaints with HUD will be prominently posted in the PHA office. Individuals who believe that they have been discriminated against with respect to housing may receive assistance from PHA staff in filing such complaints.

N. Disclaimer Policy

This policy will be interpreted and applied in accordance with applicable federal statutes and HUD regulations and policy guidance. Any conflict between the language of this policy and such federal statutes and/or regulations will be resolved in accord with federal law and policy. Additionally, since the provisions of this plan are based on local, state and federal law and regulation, the policy will be deemed automatically revised should any of those laws or regulations change. To the extent that the change is mandatory (allowing no PHA discretion), the text of this policy will be revised without requirement for administrative processing. By approving this provision, the Board of Commissioners understands that they are approving future automatic revisions responding to mandatory changes.

Appendix A: List Of Charges In Addition To Rent

Appendix B: Utility Allowances Or Consumption Allowances

Appendix C: Developments of Sites By Type

Name of Development	Total # Units	General Occupancy (former Family Units)	Mixed Population (former Elderly Units)	Designated Elderly Units	Designated Handicap Units
Alta Vista	70	70			
Plaza Hacienda	150	150			
2408 Cuba	1	1			

Appendix D: PHA Income Limits

Appendix E: Table of Flat Rents

Development:

Unit Size	Flat Rent
0	\$434.00
1	\$455.00
2	\$526.00
3	\$767.00
4	\$919.00

Appendix F: Security Deposits

Number of Bedrooms	Amount of Security Deposit
0	\$100.00
1	\$100.00
2	\$200.00
3	\$300.00
4	\$300.00

Appendix G: Termination and Eviction Policy

Housing Authority of the City of Alamogordo Alamogordo, New Mexico

Termination and Eviction Policy

Adopted by PHA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

Authorized Use by the Housing Authority of the City of Alamogordo

Termination and Eviction Policy

As a landlord, the Housing Authority of the City of Alamogordo (hereinafter referred to as PHA) has certain rights and responsibilities concerning termination of dwelling leases and eviction of residents who violate lease terms or are determined to be undesirable for other reasons.

A. Rights and Responsibilities

1. The PHA may terminate or refuse to renew a lease for serious or repeated violations of material terms of the lease by residents including, but not limited to, the following.

The regulation at 24 CFR (Code of Federal Regulations) 966.4(f)(12), requires under Section 6(1) that every lease signed by a resident of a public housing unit must contain a provision which authorizes the PHA to consider certain "criminal activity engaged in by the resident, members of their household, another person under the control of the resident, or their guests", including drug-related, *on or off* the PHA's premises to be "cause for termination of tenancy". This lease provision authorizes termination of the lease and eviction of all members of the household. Thus, any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA's public housing premises by other residents may be cause for such termination. (See CFR 966.4(e)(2) Grounds for Termination). It is the policy of the PHA to terminate tenancy of any household where a member or guest engages in such criminal, drug-related or alcohol related activity.

The PHA retains the discretion to determine on a case-by-case basis whether or not the entire household or only the offending member(s) should be evicted for such criminal activity.

2. The PHA has a One Strike or "zero tolerance" policy with respect to violations of lease terms regarding criminal activity.

The following are some examples of said activities:

- a) Displaying a deadly weapon in connection with a verbal or nonverbal threat of bodily harm;
- b) Inflicting any injury upon another person through the intentional, reckless, careless or negligent use of a deadly weapon;
- c) Damaging any property through the intentional, reckless, careless or negligent use of a deadly weapon.

B. Consideration of Favorable Factors

In the event of the receipt of unfavorable information with respect to a tenant and or lease violations that could cause termination of tenancy, the PHA will give consideration to the time, nature, and extent of the applicant's conduct. The PHA will also consider factors that might indicate a reasonable probability of favorable future conduct, such as:

1. Evidence of successful completion of an appropriate rehabilitation program for drug alcohol-related problems (requiring certification from a health professional, or State certified program). The resident may be required to provide evidence of otherwise being rehabilitated successfully (i.e., on-going participation in AA, ALANON, or other drug/alcohol support group);

2. The seriousness of the offending action;
3. The effect on the community of denial or the failure of the PHA to take such action;
4. The extent of participation by the leaseholder in the offending action;
5. The effect of denial of admission on household members not involved in the offending action;
6. The demand for assisted housing by families who will adhere to lease responsibilities;
7. The extent to which the tenant has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
8. The effect of the PHA's action on the integrity of the program;
9. The willingness of the tenant to exclude the offending household member in order to remain in the housing program, where the identified member has participated in or been culpable for action or failure to act that warrants denial;
10. Evidence of the tenant family's participation in or willingness to participate in social services or other appropriate counseling programs, and the availability of such programs.

C. Domestic Violence

1. The PHA may terminate or refuse to renew a lease to any household member who is a perpetrator of domestic violence or stalker.
2. The PHA retains the discretion to determine on a case-by-case basis whether or not the entire household or only the offending member(s) should be evicted for such criminal activity.
3. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. Criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant/participant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence. This does not limit the authority of the PHA to:
 - a) Terminate public housing assistance to individuals who engage in criminal acts of physical violence against family members or others.
 - b) Terminate public housing assistance to a tenant/participant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than other tenants in determining whether to terminate.
 - c) Terminate public housing assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or PHA if that tenant is not evicted or terminated from assistance.

- d) Upon relocation of the household member who is the victim of domestic abuse or stalking, the PHA shall terminate the assistance of the remaining family if the perpetrator of the domestic abuse or stalking remains in the household.

D. Termination by Family

1. A resident may terminate their lease at any time but must provide the PHA thirty (30) days' notice in writing and should include a forwarding address for the PHA to return the resident's security deposit after the resident vacates the premises.
2. A notice of termination by the PHA or a resident may be given on any day of the month.

E. The PHA must provide residents a notice of termination as follows:

1. Fourteen (14) days in advance, in cases of failure to pay rent;
2. Three (3) days in advance, in cases of creation or maintenance of a threat to the health and safety of other residents, or PHA employees, or a reasonable time in excess of three (3) days considering the seriousness of the situation;
3. Thirty (30) days in advance in all other cases.
4. The notice shall state the specific reasons for termination and inform the residents they have a right to reply, examine relevant PHA documents, copy relevant documents at their expense, and request a grievance hearing. The lease termination notice shall:
 - a) State that the resident is entitled to a grievance hearing on the termination;
 - b) Specify the judicial eviction procedure to be used by the PHA for eviction of the resident, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing that contains the basic elements of due process as defined in HUD regulations;
 - c) State whether the eviction is for a criminal activity as described in CFR 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in CFR 966.51(a)(2)(i)(B), or a pattern of alcohol abuse which threatens the health, safety or right to peaceful enjoyment of the premises by other residents or PHA employees.
5. HUD has issued a due process determination that the law of the State of New Mexico requires that the resident be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in the Definition section of these policies) before eviction from a dwelling unit. Therefore, the PHA has elected to determine that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA; or
 - b) Any violent or drug-related criminal activity on or off such premises; or
 - c) Any activity that resulted in felony conviction of a household member.
6. Any criminal activity is cause for termination of tenancy even in the absence of conviction or arrest.
7. Any repeated pattern of alcohol abuse which threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

8. The PHA's eviction notices to residents must be in writing, hand delivered or sent by certified mail, with a return receipt requested.
9. Notices under this grievance procedure shall be deemed delivered:
 - a) Upon personal service thereof to the complainant or an adult member (18 years of age or older) of the complainant's household;
 - b) Upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail; or
 - c) On the second day after the deposit thereof for mailing, postage prepaid, with the U.S. Postal Service, if mailed by first class mail other than certified or registered mail, unless the resident can prove that delivery of the notice, in fact, occurred at some other time.
10. If a resident is visually impaired, any notice delivered to such resident shall be in an accessible format.
11. The PHA will notify the local post office of residents evicted for criminal activity so that evicted persons will not return to the housing development to pick up their mail.

F. Future Eligibility for Assistance.

The PHA has established standards that prohibit and deny readmission of a previous resident and/or household member to the PHA's public housing program for certain drug, criminal and/or unfavorable family behaviors.

1. The PHA must prohibit and deny readmission to the PHA's public housing program for (*See also Denial of Admission*):
 - a) Persons evicted from federally-assisted housing for drug-related criminal activity for three (3) years from the date of the eviction;
 - b) Person engaging in illegal use of a drug;
 - c) Persons convicted of methamphetamine production;
 - d) Persons subject to sex offender registration requirement; and
 - e) Persons that abuse or show a pattern of abuse of alcohol.
2. The PHA may prohibit and deny readmission to the PHA's public housing program for (*See also Applicant Screening*):
 - a) An applicant's past performance in meeting financial obligations, especially rent and/or utility payments;
 - b) An applicant's previous lease violations, including the failure to comply with community service and self-sufficiency requirements;
 - c) An applicant who left owing a debt to the PHA or any other PHA (*See also Repayment Agreement for Families*);
 - d) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at any prior PHA public housing development which may have adversely affected the health, safety, or welfare of other tenants; and
 - e) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would have adversely affected the health, safety or welfare of other tenants.

The eligibility determination for readmission will be based on the circumstances of the applicant family at the time the family reapplies. The PHA may require an applicant to exclude a household member in order to be readmitted to the public housing program where that household member has participated in or been culpable for any actions described above.

In the event of unfavorable information with respect of an applicant, consideration shall be given to the time, nature and extent of the applicant's conduct, including seriousness of the offense.

NOTICE

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that the Housing Authority's general counsel and/or attorney review this policy prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.

Appendix H: Grievance Procedures

Housing Authority of the City of Alamogordo Alamogordo, New Mexico

Grievance Procedures

Adopted by PHA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

Authorized Use by the Housing Authority of the City of Alamogordo

Grievance Procedures

A. Purpose and Scope

The purpose of these Grievance Procedures is to assure that the Housing Authority of the City of Alamogordo (hereinafter referred to as PHA) residents are afforded an opportunity for a hearing, if the resident disputes within a reasonable time, any PHA action or failure to act, involving the resident's lease, or PHA regulations which adversely affect the individual resident's right's, duties, welfare or status.

1. Additional areas covered by these procedures include the:
 - a) Community Service and Self-Sufficiency Requirements
 - b) Minimum rent hardship exemptions
 - c) Income changes resulting from welfare program requirements
 - d) Improper disclosure or inappropriate use of information obtained by the PHA through criminal records, sex offender registration records, drug abuse treatment facility records and domestic violence records.

The Grievance Procedure shall be applicable to all individual grievances as defined herein.

B. Governing Law

The law governing this grievance procedure is Section 6 (K) of the U.S. Housing Act of 1937 (42 U.S.C. sec. 1437 d (K) and subpart B of 24 CFR part 966 (24 CFR secs. 966.50-966.57).

C. Definitions

The following definitions of terms shall be applicable to this grievance procedure:

1. **Grievance**: Any dispute which a resident may have with respect to an action or a failure to act by the PHA in accordance with the individual resident's lease or PHA regulations, which adversely affects the individual resident's rights, duties, welfare or status.
2. **CFR**: The Code of Federal Regulations, which contains the federal regulations governing this grievance procedure.
3. **Complainant**: Any resident (as defined in this section below) whose grievance is presented to the PHA or at the project management office in accordance with the requirements set forth in this procedure.
4. **Drug-related criminal activity**: The illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. sec. 802) as from time to time amended.
5. **"Authority"**: Housing Authority of the City of Alamogordo, a body corporate organized and existing under the laws of the State of New Mexico.

6. Elements of Due Process: The following procedural safeguards are required to be followed in an eviction action or a termination of tenancy in a state or local court:
 - a) Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;
 - b) Right of the resident to be represented by counsel;
 - c) Opportunity for the resident to refute the evidence presented by the PHA, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the resident may have; and
 - d) A decision on the merits.
7. Expedited Grievance: The procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:
 - a) Any criminal activity that threatens the health, safety and right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or
 - b) Any drug-related or violent criminal activity on or off PHA premises.
8. Hearing Officer or Hearing Panel: An impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.
9. HUD: The United States Department of Housing and Urban Development.
10. Notice: As used herein, the term notice shall, unless otherwise specifically provided, mean written notice.
11. The "Regulations": The HUD regulations contained in subpart B of 24 CFR sec. 966.
12. Resident organization: An organization of residents, which includes any resident management corporation.
13. Resident: The adult person (or persons) other than a live-in aid:
 - a) Who resides in the unit and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such persons reside in the unit;
 - b) The person who resides in the unit, and who is the remaining head of the household of the resident family residing in the dwelling unit.
14. Business Days: Monday through Friday of each week, except for legal holidays recognized by the federal government and/or local city government.

D. Incorporation in Leases

This grievance procedure shall be included in, or incorporated by reference in, all dwelling leases between the residents and the PHA.

E. Exceptions

These procedures are applicable to all individual grievances, as defined in the PHA's Definitions section of these policies, between the resident and the PHA with the following exceptions:

1. The PHA's grievance procedures are not applicable to disputes between residents not involving the PHA, or to class grievances.
2. The grievance procedures are not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA's Board of Commissioners.
3. HUD has issued a due process determination that the law of the State of New Mexico requires that the resident be given the opportunity for a hearing in court that provides the basic elements of due process (as defined in the Definition section of these policies) before eviction from a dwelling unit. Therefore, the PHA has elected to determine that this grievance procedure shall not be applicable to any termination of tenancy or eviction that involves:
 - a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of PHA; or
 - b) Any violent or drug-related criminal activity on or off such premises; or
 - c) Any criminal activity that resulted in felony conviction of a household member.

However, improper use of or disclosure of information obtained by the PHA through criminal records, sex offender registration records and drug abuse treatment facility records, may be the subject of a grievance by a tenant of the PHA.

F. Processing Grievances

The primary objective of this process is to settle grievances at the lowest level and as quickly as possible, and minimize impact upon the PHA's operations. Except as stated in paragraphs A. and B. above, the PHA's procedures shall afford each resident an opportunity for a hearing on a grievance, in accordance with the requirements, standards, and criteria contained in these procedures, with such modifications as are required by State law. The process for handling grievances is outlined below.

1. Informal Settlement of Grievance
 - a) Grievances shall be personally presented, either orally or in writing, to the PHA's central office, or to the office of the development in which the complainant resides, so that the grievance may be discussed informally and settled without a hearing. This notice should be given within ten (10) business days after the occurrence giving rise to the grievance.
 - b) A summary of such discussion shall be prepared within five (5) business days. One copy shall be given to the resident and one shall be retained in the PHA's resident file.

The summary shall specify the names of the participants, dates of the meetings, nature of the complaint, the proposed disposition of the complaint, and the specific reasons therefore, and the procedures by which a hearing may be obtained if the resident is not satisfied.

- c) The summary shall specify:
 - (1) The names of the participants,
 - (2) Dates of the meetings,
 - (3) The nature of the proposed disposition of the complainant and the specific reasons therefore,
 - (4) The rights of the complainant to a hearing, and
 - (5) The procedures by which a hearing may be obtained if the resident is not satisfied.
- d) The PHA shall specifically include notice to the complainant of the following:
 - (1) The time limit to request a grievance hearing;
 - (2) The grievance will be heard by a hearing officer or a hearing panel, and the procedures for selecting the hearing officer or hearing panel;
 - (3) What specifically must be included in the complainant's written request for a grievance, as provided in paragraph 1.b of the PHA's Procedures to Obtain a Hearing;
 - (4) If the complainant fails to request a hearing within the required time period (5 business days) after receiving the summary, the PHA's decision rendered at the Informal Settlement conference becomes final. However, the complainant does not waive the right to contest the PHA's action in an appropriate judicial proceeding;
 - (5) The complainant's rights to be represented by counsel or other representative at the grievance hearing; and
 - (6) The complainant requesting a hearing has a right to examine any PHA documents relevant to the hearing, including records and regulations. The complainant shall be allowed to obtain a copy from the PHA of any such documentation at the complainant's expense, as stated in the "Charges in Addition to Rent" schedule.

G. Procedures to Obtain a Hearing

- 1. Request for a Hearing:
 - a) The complainant shall submit a written request for a hearing to the PHA, or to the development office, within five (5) business days after receipt of the written summary of the Informal Settlement conference.
 - b) The written request shall specify:
 - (1) The reasons for the grievance;
 - (2) The action or relief sought;
 - (3) The complainant's statement setting forth the times at which the complainant will be available for a hearing during the next ten (10) business days;

- (4) Complainant's preference, if any, concerning whether the grievance should be heard by a single hearing officer or by a hearing panel.
- c) If the complainant fails to request a hearing within five (5) business days after receiving the written summary of the Informal Settlement conference, the PHA's decision rendered at the Informal Settlement conference becomes final and the PHA is not thereafter obligated to offer the complainant a hearing.
- d) Should the complainant fail to request a hearing, such failure shall not constitute a waiver by the complainant of his/her right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

H. Selection of Hearing Officer or Hearing Panel:

- 1. Grievances shall be presented before a hearing officer or hearing panel.
- 2. The hearing officer or hearing panel shall be an impartial, disinterested person selected by the PHA. The hearing officer or hearing panel shall not be:
 - a) The person who made or approved the decision, or
 - b) A subordinate of the person who made or approved the decision.

I. Hearing Prerequisite:

- 1. All grievances shall be personally presented, either orally or in writing, pursuant to the informal procedure prescribed in the paragraph on Informal Settlement of Grievance as a condition precedent to a hearing under this section.
- 2. If the complainant shows good cause why he/she failed to proceed in accordance with the paragraph on Informal Settlement of Grievance, the provisions of this subsection may be waived by the hearing officer or hearing panel.

J. Escrow Deposit:

- 1. Before a hearing is scheduled in any grievance involving the amount of Tenant Rent which the PHA claims is due, the resident shall pay into an escrow account, an amount equal to the amount of the Tenant Rent due and payable as of the first of the month preceding the month in which the act or failure to act took place.
- 2. The resident shall thereafter deposit the same amount of the Tenant Rent into that escrow account monthly, until the complaint is resolved by decision of the hearing officer or hearing panel.
- 3. The PHA may waive these requirements in extenuating circumstances. Unless so waived, failure to make such payments shall result in termination of the grievance procedures.
- 4. Failure to make payment shall not constitute a waiver of any right the resident may have to contest the PHA's disposition of the resident's grievance in any appropriate judicial proceeding.
- 5. Escrow deposits are not required for grievances related to minimum rent hardships and welfare reductions.

K. Scheduling Hearings:

1. The hearing officer or hearing panel shall promptly schedule the hearing, for a time and place reasonably convenient to both the complainant and the PHA, upon the complainant's compliance with the above requirements.
2. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.
3. The hearing may be conducted through electronic communications such as teleconference or web meetings.

L. Procedures Governing the Hearing

1. Official or Panel: The hearing shall be held before a hearing officer or a hearing panel, as appropriate.
2. Safeguards of Due Process: The complainant shall be afforded a fair hearing providing the basic safeguards of due process, which include the following:
 - a) The opportunity to examine documents before the hearing, and to copy all documents, records, and regulations of the PHA that are relevant to the hearing at the expense of the complainant. Any requested document not made available to the complainant may not be relied on by the PHA at the hearing;
 - b) The right to be represented by counsel or other person chosen as the complainant's representative;
 - c) The right to a private hearing, unless the complainant requests a public hearing;
 - d) The right to present evidence and arguments in support of the complainant's complaint, to controvert evidence relied on by the PHA or development management, and to confront and cross examine all witnesses on whose testimony or information the PHA or development management relies; and
 - e) A decision based solely and exclusively upon the facts presented at the hearing.

M. Previous Decision

The hearing officer or hearing panel may render a decision without proceeding with the hearing, if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

N. Failure to Appear:

1. If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing, for a period not to exceed five (5) business days, or may make a determination that the party has waived his or her right to a hearing.
2. The hearing officer or hearing panel shall notify both the complainant and the PHA of the determination.

3. A determination that the complainant has waived his or her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

O. Entitlement and Justification:

1. At the hearing, the complainant must first make a showing of an entitlement to the relief sought.
2. Thereafter, the PHA must sustain the burden of justifying the PHA's action or failure to act against which the complaint is directed.

P. Conduct of the Hearing:

1. The hearing shall be conducted informally by the hearing officer or hearing panel.
2. Oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.
3. The hearing officer or hearing panel shall require the PHA, the complainant, legal counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party, and granting or denial of the relief sought, as appropriate.

Q. Transcript:

1. The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing.
2. Any interested party may purchase a copy of such transcript.

R. Accommodation to Persons with Disabilities

The PHA will provide reasonable accommodation for persons with disabilities throughout the grievance process.

This includes, but is not limited to, accommodating tenants with disabilities by accepting grievances at alternate sites or by mail, having PHA staff reduce an oral request for a grievance to writing for a tenant with a disability who cannot write due to the disability, and providing accommodations in the grievance hearing itself by providing qualified sign language interpreters, readers, accessible locations or attendants.

If the resident is visually impaired, any notice to the resident which is required under this section must be in an accessible format.

S. Limited English Proficiency

The PHA must comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" issued on January 22, 2007 and available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotin_gfh/lep-faq.

T. Decision of the Hearing Officer or Hearing Panel

1. The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefore, within a reasonable time after the hearing (usually within 10 business days).
2. A copy of the decision shall be sent to the complainant and the PHA.
3. The PHA shall retain a copy of the decision in the resident's folder.
4. The PHA must maintain a log of all hearing officer or hearing panel decisions and make it available upon request of the hearing officer or hearing panel, a prospective complainant, or a prospective complainant's representative. At a minimum, the log must include:
 - a) The date of the hearing decision,
 - b) The general reason for the grievance hearing (failure to pay rent, CSSR noncompliance, etc.), and
 - c) Whether the decision was in the favor of the complainant or the PHA

U. Subsequent Actions

The decision of the hearing officer or hearing panel shall be binding on the PHA, which shall take all actions, or refrain from any actions, necessary to carry out the decision, unless the Board of Commissioners determines, within ten (10) business days, and promptly notifies the complainant of its determination, that:

1. The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affect the complainant's rights, duties, welfare, or status; and
2. The decision of the hearing officer or hearing panel is contrary to applicable Federal, State, or local law, HUD regulations, or requirements of the Annual Contributions Contract between HUD and the PHA.

V. Judicial Proceedings

A decision by the hearing officer, hearing panel, or Board of Commissioners, in favor of the PHA, or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

W. PHA Notice

Notices under this grievance procedure shall be deemed delivered:

1. Upon personal service thereof to the complainant or an adult member (18 years of age or older) of the complainant's household;
2. Upon the date receipted for or refused by the addressee, in the case of certified or registered U.S. Mail; or
3. On the second business day after first class mailing, with the U.S. Postal Service.

X. Concurrent Notice

If a complainant has filed a request for grievance hearing in a case involving the PHA's notice of termination of tenancy, the complainant should be aware that the State law notice to vacate and the notice of termination of tenancy required under Federal law can run concurrently.

If the hearing officer or hearing panel upholds the PHA's action to terminate the tenancy, the PHA may commence an eviction action in court by the later of:

1. The expiration of the date for termination of tenancy and vacation of premises stated in the delivered termination notice, or
2. The delivery of the report of decision of the hearing officer or panel to complainant.

Y. Modification

This grievance procedure may not be amended or modified except by approval of a majority of the Board of Commissioners of the PHA, present at a regular meeting or a special meeting called for such purposes.

1. The PHA must provide for at least thirty (30) days advance notice to residents and resident organizations of any changes proposed to be made to this grievance procedure, setting forth the proposed changes and providing an opportunity to present written comments.
2. The PHA shall consider any comments submitted before final adoption of any amendments.

NOTICE

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that the Housing Authority's general counsel and/or attorney review this policy prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.

Appendix I: Transfers and Transfer Waiting List

Housing Authority of the City of Alamogordo Alamogordo, New Mexico

TRANSFERS AND TRANSFER WAITING LIST

Adopted by PHA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

Authorized Use by the Housing Authority of the City of Alamogordo

Transfers and Transfer Waiting List

Transfer means the movement of a resident from one dwelling unit to another. The PHA may require a resident to move, permit a resident to move, or physically help a resident to move, depending on the circumstances in each particular case. This policy is incorporated into the Admissions and Continued Occupancy policy by reference. The Housing Authority of the City of Alamogordo (herein referred to as PHA) policies and procedures for transferring residents from one dwelling unit to another are as follows.

A. Non-discrimination

The PHA will not discriminate against any person at any stage of the transfer process because of race, color, religion, sex, age, creed, disability, familial status, or national origin. The PHA will abide by the non-discrimination requirements of the following laws and Executive Orders. (24 CFR 960.203)

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), which prohibits discrimination based on race, color, or national origin in programs receiving Federal financial assistance. (24 CFR part 1)
2. The Fair Housing Act of 1988 (42 U.S.C. 3601-3619), also prohibits discrimination in housing practices based on disability in residential real estate-related transactions. (24 CFR parts 100, 108, 109, & 110)
3. Executive Order 11063 on Equal Opportunity Housing. (24 CFR part 107)
4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination based on disability in programs receiving Federal financial assistance. (24 CFR part 8)
5. The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), which prohibits discrimination based on age in programs receiving Federal financial assistance. (24 CFR part 146)
6. Title II of the Americans with Disabilities Act (42 U.S.C. 12101-12213).

B. Types of Transfers

1. This policy sets forth several categories of transfers. Priority for transfer and the order in which families are transferred shall be subject to the hierarchy by category set forth below.
 - a) **Emergency transfers** are mandatory when the unit or building conditions pose an immediate threat to resident life, health or safety, as determined by PHA. Any condition requiring an emergency work order may be defined as an emergency if repairs cannot be made within 24 hours. Emergency transfers within sites or between sites may be made to:
 - (1) Permit repair of unit defects hazardous to life, health, or safety;
 - (2) Alleviate verified medical problems of a life threatening nature; or
 - (3) Protect members of the household from attack by the criminal element in a particular property or neighborhood, based on threat assessment by a law enforcement agency.

These transfers shall take priority over new admissions.

- b) **Category 1- Administrative Transfers** include mandatory transfers to remove to safety residents who are witnesses to crimes and may face reprisals (as documented by a law enforcement agency):

- (1) Provide housing options to residents who are victims of hate crimes or extreme harassment;
- (2) Alleviate verified medical problems of a serious nature;
- (3) Permit modernization of units;
- (4) Permit a family that requires a unit with accessible features to occupy such a unit.

These transfers shall take priority over new admissions.

Requests for medical transfers will be made to the manager. The resident shall provide the manager with the necessary documentation to substantiate the need for a medical transfer. The PHA may also offer medical transfers (e.g., moving a person with mobility problems to a unit with accessible features).

- c) **Category 2 Administrative Transfers.** Transfers within sites or between sites may be made to:

- (1) Correct occupancy standards (mandatory: over or under the PHA's occupancy standards);
- (2) Offer incentive transfers (voluntary) as described below.

These transfers will take priority over new admissions.

Category 2 transfers to correct occupancy standards will only be made if the family size is smaller than the PHA's minimum-number-of-persons-per-unit standard for the household or larger than the maximum-number-of-persons-per-unit standard for the unit the family is occupying. These transfers are mandatory.

If a family's size is between the minimum and maximum occupancy limits for the unit, the family may request a transfer, but it shall be considered a Category 3 transfer.

- d) **Category 3 Administrative Transfers.** Mandatory transfers within sites or between sites may be made to:

- (1) Correct and avoid concentration of the most economically and socially deprived families;
- (2) Correct occupancy standards (voluntary if the family is between the minimum and maximum occupancy standard but the family requests a transfer, e.g. to permit older children of opposite sexes to have separate bedrooms).

These transfers will not take priority over new admissions.

Whenever feasible, transfers will be made within a resident's area.

The PHA will not grant a transfer request solely to accommodate neighbors who "cannot get along".

C. Processing Transfers

1. The Occupancy Division will administer a centralized transfer waiting list. Managers are responsible for submitting requests for transfers including necessary documentation, to the central transfer administrator.
2. The central transfer administrator will sort requests for transfer into categories.
3. Admissions will be made in the following order:
 - a) First emergency transfers; then
 - b) Category 1 Administrative Transfers; then
 - c) Category 2 Administrative Transfers; and finally
 - d) Applicants.

Within each category, transfer applications will be sorted by the date the completed file (including any verification needed) is received from the manager.

4. Category 2 transfers to correct occupancy standards may be recommended at the time of reexamination or interim redetermination. This is the only method used to determine over/under-housed status.
5. Residents in a Category 2 over/under housed status will be advised in their thirty (30) day "Notice of Result of Reexamination" that a transfer is recommended and that the family has been placed on the transfer list.
6. Interviewers will record transfer recommendations in duplicate for each manager affected by the transfer.
7. When a head of a household, originally housed in a bedroom by him/herself, has or adopts a child, the family will not be approved for a Category 2 transfer until the child is two (2) years of age. Exceptions: spouse or partner returns to the unit, marriage takes place, or the family decides to remain in the unit and the unit is large enough (using the maximum-persons-per-unit standard) to accommodate the number of persons now in the household. (Other than for births that occur during tenancy, PHA's prior approval of additions to the household is required.)
8. Split-family transfers to resolve under-housing may be processed as Category 2 administrative transfers. Families that split into two "new" households will be transferred to two different units or a portion of the "old" household may be transferred to a single unit depending on family circumstances and unit availability. Options for split-family transfers will be considered in order to minimize the impact on vacant units.
9. Category 3 transfers will only be processed after all other transfers have been accomplished.

D. Good Record Requirement for Transfers

1. In general, and in all cases of resident-requested transfers, residents will be considered for transfers only if they:
 - a) Have not engaged in criminal activity that threatens the health and safety of residents and staff;
 - b) Do not owe back rent or other charges, or evidence a pattern of late payment; and

- c) Meet reasonable housekeeping standards and have no housekeeping lease violations.
- 2. Exceptions to the good record requirements will be made for emergency transfers and to provide accessible housing or when it is to the PHA's advantage (e.g. a single person is living alone in a 3-bedroom unit and does not want to move) to move forward with the transfer. The determination to make an exception to the good record requirement will be made by the central transfer administrator with recommendation by the Manager.
- 3. Absent a determination of exception the following policy applies to transfers:
 - a) If back rent is owed the resident will not be transferred until a payment plan is established or, if prior payment plans have failed, back rent is paid-in-full.
 - b) A resident with housekeeping standards violations will not be transferred until he/she passes a follow-up housekeeping inspection.

E. Incentive Transfers

- 1. Incentive transfers are offered to residents without regard to their race, color, national origin, religion, sex, disability, or familial status, who have good rental histories and want to move to units other than those they currently occupy.
 - a) Incentive Transfers - The PHA will occupy recently modernized and scattered site units through incentive transfers. No applicants shall be admitted directly to scattered site units. Depending on the PHA's vacant unit status, modernized units will be filled with incentive transfers, new applicants, or a combination of both. The PHA reserves the right to fill modernization units in a manner that has the least impact on vacant units.
 - b) Resident requests for incentive transfers should be made to the Housing Manager. Managers may also recommend a resident for an incentive transfer. In order for a resident to be considered for an incentive transfer the following conditions must be met:
 - (1) Residency in a PHA development for at least three (3) years;
 - (2) No repayment agreement or unpaid balance at any time in the past two (2) years;
 - (3) No history of disturbances that resulted in lease violations or violence toward staff or neighbors as indicated by notices of lease violation in the applicant's file;
 - (4) Good housekeeping record.
- 2. Incentive Transfers are Category 2 administrative transfers. Scattered site incentive transfers will take precedence over new admissions and modernization incentive transfers may take precedence over new admissions.
- 3. No exceptions will be granted to the good record requirement for incentive transfers.

F. Cost of Transfers

The PHA will pay the reasonable cost of transfers initiated by the PHA due to demolition, disposition, revitalization, or rehabilitation; transfers required because of building system failure or other emergency condition the PHA is unable to repair in a timely manner; and transfers required as a reasonable accommodation for residents with disabilities. Resident will bear the cost for transfers due to change in family composition, moving to a non-accessible unit (when accessibility features are not required by the family,) however, where there is a hardship the manager may recommend that families be reimbursed their out-of-pocket expenses.

G. Notice of Transfer

Resident families that are to be transferred will be given a thirty (30)-day notice, said time period to commence at the approximate time of delivery of the Notice of Transfer. The notices shall be: (1) hand-delivered, and (2) mailed, both prepaid first-class mail and certified mail.

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The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.

Appendix J: Housekeeping Standards Policy

Housing Authority of the City of Alamogordo

Alamogordo, New Mexico

Housekeeping Standards Policy

Adopted by PHA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

Authorized Use by the Housing Authority of the City of Alamogordo

Housekeeping Standards Policy

In an effort to improve the livability and conditions of the apartments owned and managed by the Authority, uniform standards for resident housekeeping have been developed for all resident families.

A. Authority Responsibility

The standards that follow will be applied fairly and uniformly to all Residents. The Authority will inspect each unit at least annually, to determine compliance with the standards. Upon completion of an inspection the Authority will notify the Resident in writing if he/she fails to comply with the standards. The Authority will advise the Resident of the correction(s) required to establish compliance, and indicate that training is available. Within a reasonable period of time, the Authority will schedule a second inspection. Failure of a second inspection will constitute a violation of the Lease terms.

B. Resident Responsibility

The Resident is required to abide by the standards set forth below. Failure to abide by the Housekeeping Standards is a violation of the Lease terms and can result in eviction.

C. Interior Standards

1. General:

- a) **Walls:** should be clean, free of dirt, grease, holes, cobwebs, and fingerprints.
- b) **Floors:** should be clean, clear, and free of hazards.
- c) **Ceilings:** should be clean and free of cobwebs.
- d) **Light Fixtures:** should be free of any dust build-up; light covers in place and not broken.
- e) **Windows:** should be clean and not nailed shut. Shades should be intact.
- f) **Woodwork:** should be clean, free of dust, gouges, or scratches.
- g) **Doors:** should be clean, free of grease and fingerprints. Doorstops should be present. Locks should work.
- h) **Heating units & Water Heater Closet:** should be accessible (no locks, no clutter) dusted and not used for storage.
- i) **Infestation:** No evidence of rodents or insect infestation; bait stations and traps clean.
- j) **Electric Hazards:** No electrical cords running loosely across floors; no overloads, no hazards.
- k) **Trash:** shall be disposed of properly and not left in the unit.
- l) **Evidence of Pet:** litter box, cage, and/or fish tank clean and odor free; no evidence of urine or damage caused by pet.

2. Kitchen:

- a) **Stove:** should be clean and free of food and grease.

- b) **Refrigerator:** should be clean. Freezer door should close properly and freezer have no more than one inch of ice. No stickers (decals) on refrigerators.
 - c) **Cabinets:** should be clean and neat. Cabinet surfaces and countertops should be free of grease and spilled food. Cabinets should not be overloaded. Storage under the sink should be limited to small or lightweight items to permit access for repairs. Do not store heavy pots and pans under the sink.
 - d) **Exhaust Fan:** should be free of grease and dust.
 - e) **Sink:** should be clean, free of grease and garbage. Dirty dishes should be washed and put away in a timely manner.
 - f) **Food storage areas:** should be neat and clean without spilled food.
 - g) **Trash/garbage:** should be stored in a covered container until removed to the disposal area.
3. Bathroom(s):
- a) **Toilet and tank:** should be clean and odor free.
 - b) **Tub and shower:** should be clean and free of excessive mildew and mold. Where applicable, **shower curtains** should be in place, and of adequate length.
 - c) **Lavatory/Countertop:** should be clean.
 - d) **Exhaust fans:** should be free of dust.
4. Storage Areas:
- a) **Linen closet:** should be neat and clean.
 - b) **Other closets:** should be neat and clean. No flammable materials should be stored in the unit.
 - c) **Other storage areas:** should be clean, neat and free of hazards.

D. Exterior Standards

The following standards apply to family and scattered site developments only; some standards apply only when the area noted is for the exclusive use of the Resident:

1. Yards/Grassy Area: should be free of debris, trash, indoor furniture and abandoned cars.
2. Exterior walls: should be free of graffiti.
3. Porches (front and rear): should be clean and free of hazards. Any items stored on the porch shall not impede access to the unit.
4. Steps (front and rear): should be clean, and free of hazards.
5. Sidewalks: should be clean and free of hazards.
6. Storm/Screen Doors: should be clean; glass intact; no damage
7. Parking Area: should be free of abandoned cars. There should be no car repair in the lots.
8. Hallway/Stairwell: should be swept clean and free of debris; free of any tripping hazards.
9. Laundry Area: should be swept clean; no soiled laundry piled up; lint removed from dryer; dryer vented to outside.

10. Utility/Storage Area: should be free of trash; no vehicle parts stored; no flammable materials.
11. Discarded Food/Grease: No evidence of grease or food disposed of outside of unit; no feeding dishes for animals outside of unit
12. Other: Laundry and yard tools should not be left out overnight.

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Appendix K: IRS Publication 502 – Medical and Dental Expenses

Appendix L: Definitions

Low-Rent Public Housing

Abandonment

Means absence of the resident from the dwelling, without notice to the owner, for one full rental period or in excess of seven (7) days, whichever is less; providing such absence occurs only after rent for the dwelling unit is delinquent.

ACC Expiration Date

The last day of the term during which a particular public housing development is subject to all or any of the provisions of the Annual Contributions Contract (ACC). The ACC term for a particular development expires at the latest of:

1. The end of the "Debt Service Completion Date," which is the last day of a one-year period beginning with, and inclusive of, the last debt service Annual Contribution Date for the development, as determined under the ACC (e.g., if the last debt service Annual Contribution Date is June 15, 1983, the one-year period continues through the end of the day on June 14, 1984, which is the debt Service Completion Date); or
2. The end of the date of full repayment of any indebtedness of the PHA to the Federal government in connection with the development; or
3. The end of the last date of an extension of the term of the ACC provisions related to development operation, as effected under 24 CFR, Sections 969.105, Extension of ACC upon Payment of Operating Subsidy, or 969.106, ACC Extension in Absence of Current Operating Subsidy.

Accessible

1. When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical disabilities. The phrase "accessible to and usable by" is synonymous with accessible.
2. When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route, and when designed, constructed, altered or adapted, can be approached, entered, and used by individuals with physical disabilities.
3. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR, Part 8, Section 8.32, is "accessible" within the meaning of paragraph 2.
4. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with disabilities (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible Route

A continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by 24 CFR, Part 8, and section 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability

The ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed, but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

Adjusted Income means Annual Income less the following allowances, determined in accordance with HUD instructions:

1. \$480 for each Dependent;
2. \$400 for any Elderly Family;
3. For any family that is not an Elderly Family or disabled family, but has a member other than the head of household or spouse, Handicapped/Disabled Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older, as a result of the assistance to the Disabled Person;
4. For any Elderly or Disabled Family,
 - a) That has no disability assistance expenses, an allowance for Medical Expenses, equal to the amount by which the Medical Expenses exceed three percent of Annual Income;
 - b) That has Disability Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Disability Assistance expenses computed in accordance with paragraph 3, above, plus an allowance for medical expenses, that is equal to the Family's Medical Expenses;
 - c) That has Disability Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Disability Assistance Expenses and Medical Expenses, that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and
5. Child Care Expenses.

Adult (Drug-Related and Criminal Activity)

A person who is 18 years of age or older, or has been convicted of a crime as an adult under any Federal, State or Tribal law

Annual Contributions Contract

A contract under the Housing Act of 1937, as amended, between HUD and the PHA, containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary, housing for low-income families. The ACC must be in a form prescribed by HUD, under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing development under the Act, and the PHA agrees to develop, modernize, and operate the development in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and policies.

Annual Income

The total amount of income that the family anticipates receiving during the year following the date of income calculation

Annual Income includes all amounts, monetary or not, which:

Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

Which are not specifically excluded by law, regulation or notice.

Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

Applicant

A person or a family that has applied for housing assistance.

Application for Admission

A written form, completed in accordance with PHA requirements, signed by the applicant, and submitted to the PHA. The purpose of the application is to determine whether the applicant is eligible for Public Housing.

Auxiliary Aids

Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Building Entrance on an Accessible Route

An accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or

sidewalks, if available. A building that complies with ANSI A117.1-1986 or a comparable standard complies with the requirements of this paragraph.

Check-meter

A device for measuring utility consumption within each individual dwelling unit where the utility service is supplied to the PHA through a Master-meter System. The PHA pays the Utility Supplier of the Utility Service on the basis of the Master-meter readings and uses the Check-meter to determine whether and to what extent the Utility consumption of each dwelling unit is in excess of the Allowance for PHA-Furnished Utilities.

Child

A member of the family, other than the family head or spouse, who is under 18 years of age. For continued assistance under Restrictions on Assistance to Non-citizens only: Biological or adopted children only. Stepchildren (not related to either the head of the household or the spouse) and guardianship of minors (either formal or informal) are excluded.

Child Care Expenses

Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education, and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

CIS

U.S. Citizenship and Immigration Services (formerly Immigration and Naturalization Services (INS)).

Citizen

A citizen by birth, naturalization, or national of the United States.

Common Use Areas

Rooms, spaces or elements, inside or outside of a building, that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, and laundry rooms, refuse rooms, mailrooms, recreational areas and passageways among and between buildings.

Community Service

The performance of voluntary work or duties in the public benefit that serve to improve the quality of life and/or enhance resident self-sufficiency, or/and increase the self-responsibility of the resident within the community in which the resident resides.

Complainant

Any resident whose grievance is presented to the PHA or at the project management office.

Continued Assistance Family

This is a mixed family who meets all the following requirements:

1. The family was receiving assistance under a Section 214 covered program on June 19, 1995; and
2. Whose head of the household or spouse has eligible immigration status according to the requirements of the restrictions on assistance to non-citizens; and
3. The family does not include any person (who does not have eligible immigration status) other than:
 - a) The head of the household;
 - b) Any spouse of the head of the household;
 - c) Any parents of the head of the household;
 - d) Any parents of the spouse;
 - e) Any children of the head of the household or spouse.

This does not define “family” for purposes of eligibility at the PHA (see “Family” in this Definitions section).

Contract of Participation

A contract is a form approved by HUD, entered into between a participating family and a PHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the PHA and all members of the family who elect to participate in the FSS program. These plans are attached to the contract of participation as exhibits.

Controlled Substance

Any drug or other substance, or immediate precursor included in the definition in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

Covered Families

Families who receive welfare assistance or other public assistance benefits from a State or other public agency under a program for which Federal State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition of such assistance.

Covered Person (Drug-Related and Criminal Activity)

A tenant, any member of the tenant’s household, a guest or another person under the tenant’s control.

Currently Engaging In Illegal Use of a Drug

With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, currently engaging in, means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

Dating Violence

The term 'dating violence means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim, and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the persons involved in the relationship.

Decent, Safe and Sanitary Housing (In Good Repair)

Housing is decent, safe, sanitary, and in good repair if the requirements of 982.401 (Housing Quality Standards) and the Uniform Physical Condition Standards implemented by HUD in September of 1998 are met.

Dependent

A member of the Family (except foster children and foster adults) other than the Family head or spouse, who is under eighteen (18) years of age, or is a person with a disability, or is a full-time student.

Deposit (Security)

Means, an amount of currency, or an instrument delivered to the owner by the resident as a pledge to abide by terms or conditions of the rental agreement.

Dilapidated Housing

See the definitions of Substandard Housing.

Disability Assistance Expenses

Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Disabled Family

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

A person who is under a disability, as defined in Section 233 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act; 42 U.S.C. 6001 (7).

Section 223 of the Social Security Act defines disability as:

1. Inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
2. In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in the Social Security Act), inability by reason of such blindness to engage in substantial gainful activity in which he/she has previously engaged with some regularity and over a period of time.

Disabled Person (or "Person with a Disability")

This definition no longer includes any person whose "disability" is solely related to drug or alcohol dependency.

Disallowance

An exclusion from annual income.

Discriminatory Housing Practice

An act that is unlawful under Section 804, 805, 806, or 818 of the Fair Housing Act.

Displaced Person/Family

A person or family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Divestiture Income

Imputed income from assets disposed of by an applicant or tenant in the last two years for less than fair market value.

Domestic Violence

The term 'domestic violence' includes felony or misdemeanor crimes of violence committed by a current or former spouse, by a person with whom the victim shares a child in common, by a person who cohabitating with or has cohabitated with the victim as spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Drug

A controlled substance as defined in section 102 of the Controlled Substances Act.

Drug Abuse Treatment Facility

An entity:

That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to illegal drug use; and

That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

Drug-Related Criminal Activity

The illegal manufacture, sale, distribution, or use of a drug, or possession of a drug with intent to manufacture, sell, distribute or use the drug.

Dwelling

Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Earned Income

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See 24 CFR 5.609.) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA on behalf of a participating family.

Economic Self-Sufficiency Program

Any program designed to encourage, assist, train or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include job training, employment counseling, work placement, basic skills training, education, English proficiency, financial or household management, apprenticeship and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Elderly Family

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Elderly Person

An individual who is at least 62 years of age.

Elements of Due Process

Means an eviction action or termination of tenancy in a State or local court in which the following safeguards are required:

1. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction.
2. Opportunity for the resident to examine all relevant documents, records and regulations of the PHA, prior to the trial, for the purpose of preparing a defense.
3. Right of the resident to be represented by counsel.

4. Opportunity for the resident to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses, and to present any affirmative legal or equitable defense which the resident may have.
5. A decision on the merits.

Elevated Blood Lead Level

Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Eligible Families

Current residents of public housing and applicants who have been screened and notified they are eligible but a unit is not yet available for them.

Emergency Condition

A situation in which failure to supply immediate relief would pose a serious threat to the life, health, or safety of the applicant for admission.

Enrollment

Enrollment means the date that the FSS family entered into the contract of participation with the PHA.

Escrow Deposit

An amount in dispute with respect to rent or other charges which must be paid by the family and held by the PHA pending resolution of a grievance. Escrows are not required for families requesting minimum rent hardship exemption or contesting a reduction in welfare benefits.

Evidence of Citizenship or Eligible Immigration Status

The documents that must be submitted as evidence of citizenship or eligible immigration status.

Expedited Grievance

The procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:

1. Any criminal activity that threatens the health, safety and right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or
2. Any drug-related or violent criminal activity on or off PHA premises.

Extremely Low-Income Family

A "very low-income family" whose annual income does not exceed the higher of:

The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in Puerto Rico or any other territory or possession of the United States); or

30% of the median income for the area, as determined by HUD, with adjustment for smaller and larger family, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of

unusually high or low family incomes.

Eviction

Means any action initiated by the owner to regain possession of a dwelling unit and use of the premises.

Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600-3620).

Familial Status

One or more individuals (who have not attained the age of 18 years) being domiciled with:

1. A parent or another person having legal custody of such individual or individuals; or
2. The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of the 18 years.

Family

Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

1. A single person, who may an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
2. A group of persons residing together, and such group includes, but is not limited to:
3. A family with or without children (a child who is temporarily away from home because of placement in foster care is considered a member of the family);
4. An elderly family;
5. A near-elderly family
6. A disabled family;
7. A displaced family; and
8. The remaining member of a tenant family.

Family Income

Means monthly income as defined in HUD regulations, i.e., annual income divided by 12.

Family Project (Family Development/General Occupancy Development)

Any development assisted under Section 9 of the U.S. Housing Act of 1937, which is not an elderly development. For this purpose, an elderly development is one that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for

which the PHA gives preferences in tenant selection (with HUD approval) for all units in the development to elderly families. A building within a mixed-use development which meets these qualifications shall, for the purposes of 24 CFR, Part 965, Subpart H, Lead-Based Paint Poisoning Prevention, be excluded from any family development. Zero bedroom units, for the purposes of Subpart H, are excluded from any family development.

Family Self-Sufficiency (FSS)

Family Self-Sufficiency program or FSS program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the U.S. Housing Act of 1937.

FSS Account

FSS account means the FSS escrow account authorized by section 23 of the U.S. Housing Act of 1937.

FSS Credit

FSS credit means the amount credited by the PHA to the participating family's FSS account.

FSS Family

FSS family or participating family means a family that resides in public housing, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS-Related Service Program

FSS-related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in regulations.

FSS Slots

FSS slots refer to the total number of public housing units that comprise the minimum size of a PHA's public housing FSS program.

Federal Preference

The Quality Housing and Work Responsibility Act of 1998 has permanently eliminated federal preferences. However, the language and criteria of the former Federal preferences may be retained or adopted by the PHA as their local preferences. Therefore these definitions remain without the reference to "Federal". Means a resident selection preference for admission of applicant families that are any of the following:

1. Involuntarily displaced;
2. Living in substandard housing (including families that are homeless or living in a shelter for the homeless);
3. Paying more than 50 percent of family income for rent.

Federally Assisted Housing (Drug-Related and Criminal Activity)

1. Public housing;
2. Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937;
3. Housing that is assisted under Section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act;
4. Housing that is assisted under Section 202 of the Housing Act of 1959; as such section existed before enactment of the National Affordable Housing Act;
5. Housing that is assisted under Section 811 of the National Affordable Housing Act;
6. Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act;
7. Housing insured assisted or held by HUD or by a State or local agency under section 236 of the National Housing Act;
8. Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949.

Fixed Source of Income

A family member with a fixed source of income is a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

- a) Social Security, Supplemental Security Income (SSI), Supplemental Disability Insurance;
- b) Federal, state, local, or private pension plans;
- c) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or
- d) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest

Flat Rent

Flat rent is determined annually by the PHA and is based on the market rental value of the unit. The PHA will establish a flat rent for each public housing unit that is:

- a) No less than 80 percent of the applicable Fair Market Rent (FMR); or
- b) No less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area. If HUD has not determined an applicable SAFMR or unadjusted rent, the PHA must rely on the applicable FMR; or
- c) Established based on an exception from HUD.

The PHA must revise, if necessary, the flat rent amount for a unit no later than 90 days after HUD issues the new FMRs.

For unit where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance for which the family might otherwise be eligible.

If a new flat rent would cause a family's rent to increase by more than 35%, the family's rent increase must be phased in at 35% annually until such time that the family chooses to pay the income-based rent or the family starts to pay the established flat rent.

Full-time Student

A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with or without a diploma or certificate program, as well as an institution offering a college degree.

Gender Identity

Means actual or perceived gender-related characteristics.

Good Faith

Means honesty in fact, in the conduct of the transaction concerned, as evidenced by all surrounding circumstances.

Grievance

Any dispute which a resident may have with respect to PHA action or failure to act in accordance with the individual resident's lease, or PHA regulations which adversely affect the individual resident's rights, duties, welfare, or status.

Guest (Drug Related or Criminal Activity)

A person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of 966 and 982 apply to these guests.

Handicap/Disability

With respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment, or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act; 21 U.S.C. 802). For the purpose of 24 CFR Part 100, Discriminatory Conduct Under the Fair Housing Act, an individual shall not be considered to have a disability solely because that individual is a transvestite (a person, especially a male, who dresses in the clothing of the opposite sex for psychological reasons).

Handicapped/Disabled Assistance Expenses

Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Disabled Family member, and that are necessary to enable a Family member (including the Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

Handicapped/Disabled Person

A person having a physical or mental impairment that:

1. Is expected to be of long-continued and indefinite duration;
2. Substantially impedes the person's ability to live independently; and
3. Is of such a nature that such ability could be improved by more suitable housing conditions.

Has a Record of Such an Impairment

As used in the definition of Disability, means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Head of Household

The head of household is the adult member of the family who is designated for purposes of determining income eligibility and rent.

Hearing Officer/Hearing Panel

An impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

Homelessness

Per PIH Notice 2013-15, the PIH definition for IMS-PIC reporting (Form 50058) is narrowed to the following two categories found in The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act).

Category 1: An individual or family who **lacks a fixed, regular, and adequate nighttime residence**, meaning:

1. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; **or**
2. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); **or**
3. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

Category 4: Any individual or family who:

1. Is **fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking**, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the

individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; **and**

2. Has no other residence; **and**
3. Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing

Household (Drug-Related and Criminal Activity)

The family and PHA-approved live-in aide.

Housing Agency (HA)

A State, county, municipality or other governmental entity or public body authorized to administer the program. The term "HA" has been replaced by the term "PHA" (Public Housing Agency) and no longer includes an Indian Housing Authority (IHA).

Housing Assistance Limitation for Single Persons

A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided public housing and other project-based assistance in a housing unit with two or more bedrooms.

Housing Manager/Assistant Housing Manager

A Housing Manager is any person who, irrespective of title, is responsible for the day-to-day management and operation, which may include the supervision of employees, of a low-income housing development or developments. An Assistant Housing Manager is any person who, irrespective of title, is responsible for assisting a Housing Manager in performing his/her managerial responsibilities.

Housing Provider (Responsible Entity)

1. The owner or manager of the housing facility;
2. The owner or manager of the common and public use areas of a housing facility, when the dwelling units are individually owned;
3. The term "housing provider" may include any person or entity that operates a housing facility. The term "housing provider" includes any person or entity that represents the property owners of a community in their housing interest, including homeowners or resident associations, whether or not there is common ownership operation of any portion of a community.

Housing Subsidies

Means, assistance to meet the costs and expenses of temporary shelter, rental housing or homeownership, and includes rent, mortgage or utility payments.

HUD

The Department of Housing and Urban Development or its designated officer or employee.

HUD Field Office

Any HUD Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to the area in which the PHA is located.

Immigration and Naturalization Service (INS)

Now called the U.S. Citizenship and Immigration Services (CIS).

Imputed Welfare Income

The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Income Limits

HUD establishes Extremely Low-Income, Very Low-Income and Low-Income limits that are used to determine if assisted housing program applicants qualify for admission to HUD-assisted programs. These income limits are based on HUD estimates for area median family income (using Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas as defined by the Office of Management and Budget (OMB), and the Bureau of the Census definition of family) with specific statutorily permissible adjustments. If the income limits based on this approach would be less than if based on the relevant State non-metropolitan median family income level, income limits are based on the State non-metropolitan family income level.

Income-Based Rent

An amount based on the projected family income for the subsequent 12 month period.

Indian

Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Individual Training Services Plan

Means a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the PHA in consultation with the family member, and which sets forth:

1. The supportive services to be provided to the family member;
2. The activities to be completed by that family member; and
3. The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

Individual with a Disability

A person having a physical or mental impairment that: (a) is expected to be of long-continued and indefinite duration; (b) substantially impedes the person's ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

Is Regarded as Having an Impairment

As used in the definition of Disability, means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities, but that is treated by another person as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
3. Has none of the impairments defined under the definition of "physical or mental impairment," below, but is treated by another person as having such an impairment.

Kin-GAP Payments

Kin-GAP payments are subsidies that go to, or on behalf of, children leaving the juvenile court system to live with a relative or legal guardian. This is an excluded income.

Kinship Care Payments

Kinship care payments are foster care subsidies that go to, or on behalf of, children living with a relative or legal guardian. This is an excluded income.

Law Enforcement Agency

The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.

Lead-Based Paint

A paint surface, whether or not defective, identified as having a lead content greater than or equal to one microgram of lead per square centimeter (one centimeter is slightly more than three-eighths of an inch).

Live-In Aide

A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

1. Is determined by the PHA to be essential to the care and well-being of the person or persons;
2. Is not obligated for support of the person or persons, and
3. Would not be living in the unit except to provide necessary supportive services. (See the definition of Annual Income for treatment of a Live-In Aide's income.)

Local Preference

A preference used by the PHA to select among applicant families.

Location (or Site)

A term used to identify units located in any common geographical area. It may be a development, a portion of a development, two or more developments, or an entire development plus one or more portions of another development. If the units are divided by a major architectural or topographical barrier, such as a freeway, stream or retaining wall, that substantially impairs mutual access, the separated units constitute separate locations or sites.

Low-Income Family

A family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family income.

Major Life Activities

As used in the definition of Disability, means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Management Contract

A written agreement between a resident management corporation and a PHA as provided by 24 CFR 964.35, Management Responsibilities.

Marriage

Marriage certified by a formal marriage license, or an informal marriage, as may be specified in State or local laws or regulations.

Master-Meter System

A Utility distribution system in which a PHA is supplied Utility Service by a Utility supplier, through a system meter or meters, and distributes the Utility Service to its residents.

Medical Expenses

Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance. (Medical expenses are allowable only for Elderly or Disabled Families.)

Minimum Rent

An amount of rent to be paid by each family as directed by HUD and determined by the PHA. The minimum rent amount must be established between \$00.00 and \$50.00 and includes the utility allowance. Hardship exemptions as outlined in the Admissions and Continued Occupancy Policy and Dwelling Lease apply.

Minor

A person who is under the age of legal competence, unless otherwise determined by State Law.

Mixed Family

A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Mixed Population Project

A public housing project, or portion of a project that is reserved for elderly families and disabled families at its inception (and has retained that character). If the project was not so reserved at its inception the PHA has obtained HUD approval to give preference in Tenant Selection for all units in the project (or portion of project) to elderly families and disabled families. These projects formerly were known as elderly projects.

Monthly Adjusted Income

One-twelfth of Adjusted Income.

Monthly Income

One-twelfth of Annual Income.

National

A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession, including Puerto Rico, the U.S. Virgin Islands, Guam, Canal Zone, etc.

Near-Elderly Person/Family

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

Net Family Assets

1. Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD home-ownership programs or FSS savings accounts.
2. The value of necessary items of personal property, such as furniture and automobiles, shall be excluded.
3. In cases where a trust fund has been established and the trust is not revocable by, or under the control of any member of the Family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income.
4. In determining Net Family Assets, the PHA shall include the value of any assets disposed of by an applicant or resident for less than fair market value, (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program, or reexamination, as applicable, in excess of the consideration received

therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or resident received important consideration not measurable in dollar terms.

Non-citizen

A person who is neither a citizen nor a national of the United States.

Normal Wear and Tear

Means deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the resident, members of the resident's household, or by his/her invitees or guests. However, un-cleanliness does not constitute normal wear and tear.

Occupancy Standards

These standards are established by the PHA for determining the number of bedrooms required for families of different sizes and compositions.

Older Person

A person 55 years of age or older.

Other Person Under the Tenant's Control, for the Purposes of the Definition of Covered Person (Drug-Related and Criminal Activity)

The person, although not staying as a guest (as defined under "guest") in the unit, is, or was at the time of the activity in question, on the premises (as defined under "premises") because of an invitation express or implied from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.

Over-Income Family

An individual or family who is not a low-income family at the time of initial occupancy. An individual or family whose annual income for eligibility purposes exceeds eight percent (80%) of the median income for the PHA's area of operation.

Participant

Has the following meaning for the programs referred to in the regulations.

1. Part 960: a resident under the program.
2. Part 905: a resident or homebuyer under the program.

Partnership Process

A specific and ongoing process that is designed to ensure that residents, resident groups, and the PHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or CGP. At a minimum, a PHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

Passbook Rate

The interest rate, as determined by the PHA, used in calculating the imputed income from assets over \$5,000.

Passbook Rate Calculation

The PHA will use the actual Savings National Rate that is in effect on the first day of the PHA's fiscal year. The PHA will review the Savings National Rate annually and adjust it accordingly on the first day of the PHA's fiscal year. Current and historical Savings National Rates may be accessed at www.fdic.gov/regulations/resources/rates/ .

Paying More Than 50 Percent of Family Income for Rent

See the definition of Rent Burden Preference, below.

Person in the Business of Selling or Renting Dwellings means any person who:

1. Within the preceding twelve (12) months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
2. Within the preceding twelve months, has participated as agent, other than in the sale or his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
3. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

PHAS (Public Housing Assessment Program)

The revised assessment program for public housing a authority that became effective on October 1, 1998, and applies first to housing authorities with fiscal years ending September 30, 1999.

PHMAP

This assessment program has been replaced by PHAS.

The Public Housing Management Assessment Program (PHMAP) is a process designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies, and to lead to overall better management of the public housing program, in accordance with 24 CFR part 901.

Physical or Mental Impairment

As used in the definition of Disability, includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; Genitourinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism,

epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Police Officer

A person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

Preference Over Single Persons

The following preference has been eliminated unless the PHA specifically adopts this preference locally: An applicant that is a one-or two-person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly, displaced person, or a person with disabilities, regardless of the applicant's local preferences.

Premises

Means, facilities, appurtenances, areas and other facilities held out for use of the resident, or whose use is promised to the resident coincidental with occupancy of a dwelling unit. For purposes of Drug-Related and Criminal Activity, premises means, the building or complex or development in which the public housing unit is located, including common areas and grounds.

Preponderance of Evidence

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Processing Entity

The person or entity that, under any of the programs covered in 24 CFR, Part 5.210-5.238, is responsible for making eligibility and related determinations and any income reexaminations.

Project (Development)

Includes any of the following that meet the requirements of 24 CFR, Part 964, Resident Participation and Management in Public Housing:

1. One or more contiguous buildings;
2. An area of contiguous row houses;
3. Scattered site buildings.

The whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

Project (Development) for the Elderly or Disabled (24 CFR, Section 942.3)

Means any development assisted under the United States Housing Act of 1937 (other than under Section 8 or Section 17 of the Act), including any building within a mixed-use development, that was designated for occupancy by the elderly or disabled at its inception, or, although not so designated, for which the PHA gives preference in Tenant Selection (with HUD approval) for all units in the development (or for a building within a mixed-use development) to elderly or disabled families. For the purposes of 24 CFR, Part 942, Pet Ownership in Public Housing for the Elderly or Disabled, this term does not include developments assisted under the Low-Rent Housing Homeownership Opportunity program--Turnkey III; 24 CFR, Part 5.300 et al, or under Title II of the U.S. Housing Act of 1937--Indian Housing; 24 CFR, Part 905.

Public Housing Agency (PHA)

Any State, county, municipality, or other governmental entity or public body, (or agency or instrumentality thereof) that is authorized to engage in or to assist in the development or operation of low-income housing. For the purposes of 24 CFR, Part 942, Resident Participation and Management in Public Housing, the term Public Housing Agency does not include Indian Housing Authorities.

Public Use Areas

Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Qualified Individual With Disabilities

1. With respect to employment, an individual with disabilities who, with reasonable accommodation, can perform the essential functions of the job in question; and
2. With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an Individual With Disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or
3. With respect to any other non-employment program or activity, an Individual With Disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.
4. Essential eligibility requirements include stated eligibility requirements, such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria, and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety, in the absence of necessary supportive services, may be "qualified" for occupancy in a development where such supportive services are provided by the recipient as part of the assisted program. The person may not be "qualified" for a development lacking such services.

Reasonable Accommodation

Means making alterations or adaptation to provide access to otherwise qualified individuals with disabilities, in the use of the program and facilities, without causing undue hardship or substantially altering the program or activity.

Remaining Member of a Tenant/Resident Family

Means a person who was a member of a household occupying a PHA dwelling unit, and who remains in the unit after other members of the household have departed, usually because of marriage, separation, divorce, death, or long-term illness requiring placement in a nursing home or other facility.

Rent

See definitions of rent as stated in Rent Burden Preference as noted below.

Rent Burden Preference

1. "Rent burden preference" means the preference for admission of applicants that pay more than 50 percent of family income for rent.
2. For purposes of determining whether an applicant qualifies for the rent burden preference:
 - a) "Family income" means Monthly Income, as defined in 24 CFR 5.603.
 - b) "Rent" means:
 - (1) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and
 - (2) For utilities purchased directly by residents from utility providers:
 - a. The utility allowance for family-purchased utilities and services that is used in the PHA resident-based program, or
 - b. If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.
 - c. Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.
 - d. For PHAs and IHAs administering programs under 24 CFR Chapter IX, the utility allowance would represent the PHA's or the IHA's estimate of the cost of utilities.
3. An applicant does not qualify for a rent burden preference if either of the following is applicable:
 - a) The applicant has been paying more than 50 percent of income for rent for less than 90 days.
 - b) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following

programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of under-occupied and overcrowded units:

- (1) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;
 - (2) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or
 - (3) Rental assistance payments under section 236(f)(2) of the National Housing Act.
4. An applicant may not qualify for a rent-burden preference if the applicant is paying more than fifty percent (50%) of family income to rent a unit because the applicant's housing assistance with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures regarding the occupancy of under-occupied and overcrowded units.

Residency Preference

A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency Preference Area

The specified area where families must reside to qualify for a residency preference.

Resident

Means a person entitled, under a rental agreement, to occupy a dwelling unit in peaceful possession, to the exclusion of others, and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home.

Resident Council

An incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

1. It must be representative of the residents it purports to represent.
2. It may represent residents in more than one development or in all of the developments of a PHA, but it must fairly represent residents from each development that it represents.
3. It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).
4. It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

Resident Groups

Democratically elected resident groups such as PHA-wide resident groups, area-wide resident groups, single development resident groups, or RMCs.

Resident Management

The performance of one or more management activities for one or more developments by a resident management corporation under a management contract with the PHA.

Resident Management Corporation

The entity that proposes to enter into, or enters into, a management contract with a PHA that meets the requirements of 24 CFR, Part 964, Subpart C, Resident Management Under Section 20 of the U.S. Housing Act of 1937. The corporation must have each of the following characteristics:

1. It must be a non-profit organization that is incorporated under the laws of the State in which it is located.
2. It may be established by more than one resident organization or resident council, so long as each such organization or council (a) approves the establishment of the corporation and (b) has representation on the Board of Directors of the corporation.
3. It must have an elected Board of Directors.
4. Its bylaws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.
5. Its voting members must be residents of the development or developments it manages.
6. It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.
7. It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR, Part 964, for a resident council.

Responsible Entity

The PHA administering the low-income public housing program under an ACC with HUD.

Retail Service

Purchase of utility service by PHA residents directly from the utility supplier.

Section 214

Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for non-citizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 Covered Programs

Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437-1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z-1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Section 504

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

Self-Sufficiency

Means, a FSS family is no longer receiving welfare assistance. Achievement of self-sufficiency, although a FSS program objective, is not a condition for receipt of the FSS account funds.

Sexual Orientation

Means homosexuality, heterosexuality or bisexuality.

Single Person

A person who lives alone, or intends to live alone, and who does not qualify as an Elderly Family, a Displaced Person, or the Remaining Member of a Resident Family.

Social Security Number

The number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The Social Security Number has nine digits separated by hyphens, as follows: 000-00-0000. It does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

Special Admission

Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Specified Welfare Benefit Reduction

A reduction of welfare benefits, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program. It does not include a reduction or termination of welfare benefits by the welfare agency:

1. at expiration of a lifetime or other time limit on the payment of welfare benefits;
2. because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements;
3. because a family member has not complied with other welfare agency requirements.

Spouse

Means: the husband or wife of the head of the household. Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common law marriage. It does not cover boyfriends, girlfriends, significant others, or "co-head." "Co-head" is a term recognized by some HUD programs, but not in public and Indian housing programs. This definition applies to Restrictions on Assistance to Non-citizens.

Stalking

The term 'stalking' means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Stalking may include to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and/or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily harm to: (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person. Immediate family member means, with respect to a person- - a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood and marriage.

Statement of Family Responsibility

An agreement, in the form prescribed by HUD, between the PHA and a family to be assisted under the Program, stating the obligations and responsibilities of the two parties.

Surcharge

The amount charged to residents for the consumption of Utilities in excess of a reasonable allowance therefore, based on Utility use determined by means of a check-meter. The amount charged by the PHA to a resident, in addition to the Tenant Rent, for the consumption of Utilities in excess of the Allowance for PHA-Furnished Utilities, or for estimated consumption attributable to Resident-owned major appliances, or to optional functions, such as air conditioning, of PHA-furnished equipment. Surcharges calculated pursuant to Section 965.477(b), based on estimated consumption where check-meters have not been installed, are referred to as "Scheduled Surcharges."

Tenant (Resident)

Any lessee or the remaining head of the household of any resident family residing in PHA-owned or leased housing accommodations.

Tenant (Resident) Participation

A process of consultation between residents and the PHA concerning matters affecting the management of public housing, as a means of providing residents with information about PHA

plans and decisions and affording them opportunities to make comments and recommendations, on an advisory basis, about those plans and decisions.

Tenant Rent

1. The amount payable monthly by the Family as rent to the PHA.
2. Where all utilities (except telephone & cable) and other essential housing services are supplied by the PHA, Tenant Rent equals Total Tenant Payment.
3. Where some or all utilities (except telephone & cable) and other essential housing services are not supplied by the PHA, and the cost thereof is not included in the amount paid as rent, Tenant Rent equals Total Tenant Payment less the Allowance for Tenant-Purchased Utilities.

Term

Means the period of occupancy specified in the rental agreement. Effective April 28, 2000, the term of the lease agreement for public housing units is 12 months and automatically renewable except for non-compliance with the community service requirement, where applicable.

Total Tenant Payment

1. Total Tenant Payment for families whose initial lease was effective on or after August 1, 1982.
Total Tenant Payment is the amount calculated under section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)). Total Tenant Payment shall be the highest of the following, rounded to the nearest dollar:
 - a) Thirty percent (30%) of Monthly Adjusted Income;
 - b) Ten percent (10%) of Monthly Income; or
 - c) If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (C) of section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)(C)) shall be the amount resulting from one application of the percentage.
 - d) A minimum rent as adopted by the PHA.
2. Total Tenant Payment for families residing in public housing does not include charges for excess utility consumption or other miscellaneous charges.
3. Total Tenant Payment for families residing in public housing whose initial lease was effective before August 1, 1982. Paragraphs (b) and (c) of 24 CFR 913.107, as it existed immediately before November 18, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 900 to 1699), will continue to govern the total Tenant Payment of families, under a public housing program, whose initial lease was effective before August 1, 1982.
4. Mutual-help home ownership developments.
Paragraphs 1 of this section shall not apply to Mutual Help Home ownership developments (see 24 CFR, Part 905, section 905.416).
5. Total Tenant Payment does not include any Surcharge or other miscellaneous charges.

Unit Size

Unit size or size of unit refers to the number of bedrooms in a dwelling unit.

Unreimbursed Medical Expense Costs

This deduction is granted only to elderly or disabled families. A range of medical expenses and services can be claimed to the extent that the total medical expenses exceed three percent (3%) of annual income. Determination of eligibility for reimbursement of expenses will be consistent with the current IRS Publication 502.

U.S. Citizenship and Immigration Services (CIS)

Formerly called the Immigration and Naturalization Service (INS).

Utility Allowance

The cost of utilities (except telephone & cable) and other housing services for an assisted unit that is not included in the Tenant Rent, but is the responsibility of the family occupying the unit, and an amount equal to the estimate made and adopted by the PHA of the monthly cost of a reasonable consumption of such utilities and other services for the unit, by an energy conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility Reimbursement

Where applicable, the utility reimbursement shall be paid to the family in the manner provided in the pertinent program regulations. A PHA or owner may pay the utility reimbursement directly to the utility company without the consent of the family; however, the PHA must advise the family of the amount paid.

Verification Technique Definitions:

1. Upfront Income Verification (UIV) (Level 6/5)

The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals.

2. Written Third Party Verification (Level 4)

An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date.

3. Written Third Party Verification Form (Level 3)

A standardized form to collect information from a third party source (also known as traditional third party verification). The form is completed by the third party by hand (in writing or in typeset). PHAs send the form directly to the third party source by mail, fax, or email.

4. Oral Third Party Verification (Level 2)

Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit.

5. Tenant Declaration (Level 1)

The tenant submits an affidavit or notarized statement of reported income and/or expenses to the PHA.

Very Low-Income Family

1. A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

2. HUD may establish income limits higher or lower than 50 percent of the median income for the area, on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Veteran

1. Means any person honorably discharged from the Armed Forces of the United States, who served in any of the following wars or conflicts, but not limited to these, World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; or in World War II, on or after December 7, 1941, until final cessation of all hostilities; or in the Korean Conflict; Lebanon Crisis; Berlin Crisis; the Congo; the Dominican Republic, and Vietnam.
2. "Veteran" does not include a person enlisted and accepted for active training only for a period of six (6) months or less.

Violent Criminal Activity

Any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be likely to cause, serious bodily injury or property damage.

Welfare Assistance

Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

NOTICE

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that the Housing Authority's general counsel and/or attorney review this policy prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.

Housing Authority of the City of Alamogordo

Alamogordo, New Mexico

**DWELLING LEASE
PART I & PART II**

Adopted by PHA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

Authorized Use by the Housing Authority of the City of Alamogordo

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Part I: Public Housing Residential Lease Agreement

Terms and Conditions

This Lease Agreement (called the Lease) is between the Housing Authority of the City of Alamogordo, (called PHA) and Tenant named in Part II of this Lease (called Tenant).

A. Description of Parties and Dwelling Units

1. The PHA, leases to the Tenant, the property (called Dwelling Unit) described in Part II of the Lease Agreement, subject to the terms and conditions contained in this Lease.
2. Dwelling unit must be the sole private residence of the Tenant and the family members named on Part II of the Lease. Only those persons identified in Part II of this Lease may occupy the unit.
3. Any additions to the household members named on the Lease, including Live-in Aides and foster children/adults, **but excluding natural births, adoptions, and court awarded custody**, require the advance written approval of the PHA. Such approval will be granted only if the new family members pass PHA screening criteria and a unit of appropriate size is available. Permission to add Live-in Aides and foster children/adults shall not be unreasonably refused.

Tenant agrees to wait for PHA approval before allowing additional persons to move into dwelling unit. Failure on the part of the Tenant to comply with this provision is a serious violation of the material terms of the Lease, and the PHA may terminate the Lease.

4. Tenant shall report any deletions of the household members named on Part II of the Lease to the PHA in writing, within ten (10) calendar days of the occurrence. Tenant shall date and initial Part II of the Lease whenever a household member moves into or out of the dwelling unit.

B. Lease and Amount of Rent

1. Unless otherwise modified or terminated in accordance with Section P, this Lease shall automatically renew for successive terms of one (1) year. The rent amount is stated in Part II of this Lease. Rent shall remain in effect unless adjusted by the PHA in accordance with Section G herein. The amount of Total Tenant Payment and Tenant Rent shall be determined by the PHA in compliance with HUD regulations and requirements and in accordance with PHA's Admissions and Continued Occupancy Policy.
2. **Rent is due and payable in advance on the first day of each month and shall be considered delinquent after the fifth (5th) calendar day of the month.** Rent may include utilities as described in Part I, section F below and includes all maintenance services due to normal wear and tear. When PHA makes any change in the amount of Total Tenant Payment or Tenant Rent, PHA shall give written notice to Tenant. The PHA shall give written notice to the Tenant in accordance with State law. The notice shall state the new amount and the date from which the new amount is applicable. Rent redeterminations are subject to the Grievance Procedures. The notice shall also state that Tenant may ask for an explanation of how the amount is computed by the PHA. If Tenant asks for an explanation, the PHA shall respond in a reasonable time.

C. Other Charges

In addition to rent, Tenant is responsible for the payment of certain other charges specified in this Lease. The type(s) and amounts of other charges are specified in Part II of this Lease Agreement. Other charges can include:

1. Maintenance Costs: The cost for services or repairs to the dwelling unit, common areas or grounds beyond normal wear and tear caused by Tenant, household members or guests. Tenant shall be charged for the cost of such service in accordance with the Schedule of Maintenance Charges posted by the PHA or based on the actual cost to PHA for the labor and materials needed to complete the work. If work must be performed outside normal working hours, overtime rates will be charged.
2. Surcharge for Excess Usage: At developments where some or all utilities are provided by the PHA, a surcharge shall be assessed for excess consumption usage, including extra consumption due to operation of approved tenant-supplied appliances. This surcharge does not apply to Tenants who pay their utilities directly to a utility supplier.
3. Installation Charges: A charge will be assessed for installation of Tenant air conditioners or approved appliances.
4. Late Charges: A late charge will be assessed for payment of rent or other charges after the date specified in Part II of the Lease.
5. PHA shall provide written notice of the amount of any charge or surcharge in addition to Tenant Rent and when the charge or surcharge is due. Charges or surcharges, other than rent, are due fourteen (14) days after Tenant receives PHA's written notice of the charge or surcharge. Failure to pay surcharges on due date shall be considered a serious violation of the terms of the Lease and shall be grounds for termination of the Lease.
6. Retroactive Rent: The Tenant shall be required to pay retroactive rent resulting from, Tenant's underreporting or failure to report income, failure to provide adequate documentation, failure to report changes in a timely manner, or misrepresentation of income or family circumstances to the PHA.

The PHA shall determine the retroactive rent amount as far back as the PHA is able to document. Upon determination of the retroactive rent amount, the family shall be required to pay the retroactive amount in full or enter into a Repayment Agreement with the PHA.

The Repayment Agreement shall clearly state the total retroactive rent amount payable to the PHA in addition to the family's regular monthly rent. The repayment time period in which the retroactive rent balance will be paid shall be based on the monthly payments determined and the retroactive balance.

The PHA shall have full discretion in establishing the number of months in the Repayment Agreement for the family to pay the debt.

A minimum rent hardship exemption previously granted to a family owing retroactive rent will be automatically revoked and the family will be required to pay the retroactive rent in full or enter into a Repayment Agreement for any retroactive rent owed, including rent owed during the hardship exemption period.

Late and missed retroactive rent payments by the family shall constitute default of the Repayment Agreement. In such cases, the PHA shall have the right to terminate this Lease and obtain possession of the dwelling unit pursuant to available legal remedies.

D. Payment Location

All payments must be made by check or money order at the Management Office, or mailed to 104 Avenida Amigos, Alamogordo, NM 88310. The PHA will not accept cash payment. There will be a twenty-five dollar (\$25.00) charge on any returned check. Tenant's who have submitted a returned check will be required to make all further payments by money order or cashier's check.

E. Security Deposit

1. Tenant Responsibilities—Tenant agrees to pay a Security Deposit prior to occupancy. The dollar amount of the Security Deposit is located in Part II of this Lease.
2. PHA Responsibilities—After Tenant vacates the dwelling unit and the premises have been inspected by the PHA, the Security Deposit shall be refunded to Tenant, less any charges for:
 - a) Unpaid rent and other charges;
 - b) Payment of court costs, expenses, and attorney fees incurred in enforcing this Lease or in recovering possession of the dwelling unit unless the Tenant prevails in such legal action and is awarded such;
 - c) Cost of non-routine cleaning or repair beyond normal wear and tear of the dwelling unit or its equipment;
 - d) Cost of rekeying locks if keys are not returned to the Management Office;
 - e) Prorated rent if required written notice of intent to vacate is not provided.

The Security Deposit may not be used to pay rent or other charges while Tenant occupies the dwelling unit. No refund of the Security Deposit will be made until Tenant has vacated the dwelling unit and the PHA has inspected the unit.

The return of a Security Deposit, less any amounts owed, shall occur within thirty (30) days after the Tenant has vacated. **PHA agrees to return the Security Deposit, if any, to Tenant when he/she vacates, less any deductions for any costs indicated above, so long as Tenant furnishes PHA with a forwarding address and thirty (30) days' notice of intent to vacate (written notice not applicable to death during tenancy).** If any deductions are made, PHA will furnish Tenant with a written statement of any such deductions from the Security Deposit.

If no forwarding address is provided, the PHA will mail any refund of Security Deposit to the last known address. Tenant understands and agrees it is his/her responsibility to provide PHA with a valid forwarding address.

F. Appliances and Utilities

1. PHA Supplied Appliances: If indicated by an (X) on Part II of this Lease, PHA will provide the specified appliance. Other major electrical appliances, air conditioners, freezers, extra refrigerators, washers, dryers, etc., may be installed and operated only with the written approval of PHA.
2. PHA Supplied Utilities: If indicated by an (X) on Part II of this Lease, PHA will supply the indicated utility. PHA will not be liable for the failure to supply utility service for any cause whatsoever unless the PHA acted intentionally or negligently in not supplying utility services.

3. Tenant-Paid Utilities: If Tenant resides in a development where PHA does not supply electricity, natural gas, heating fuel, water, sewer service, or trash collection, a **Utility Allowance** shall be established, appropriate for the size and type of dwelling unit, for utilities Tenant pays directly to the utility supplier. The Total Tenant Payment less the allowance for utilities equals Tenant rent. If the allowance for utilities exceeds Total Tenant Payment, PHA will pay a Utility Reimbursement. If Tenant's actual utility bill exceeds the allowance for utilities, Tenant shall be responsible for paying the actual bill to the utility supplier. If Tenant's actual utility bill is less than the Utility Allowance, Tenant shall receive the benefit of such savings.

Tenant agrees to maintain utility service in the dwelling unit at all times. Failure to maintain utility service for more than twenty-four (24) hours shall be considered a serious violation and shall be grounds for termination of the Lease.

PHA may change the Utility Allowance at any time during the term of the Lease, and shall give Tenant sixty (60) days written notice of the revised Utility Allowances prior to the proposed effective date along with any resultant changes in Tenant Rent or Utility Reimbursement.

4. Tenant agrees not to waste utilities provided by the PHA and to comply with any applicable law, regulation, or guideline of any governmental entity regulating utilities or fuels or restrictions of specific appliances.
5. Illegal tampering with utility metering devices shall be considered a violation and grounds for termination of this Lease.
6. All utilities shall be in the name of the Head of the Household or other adult household member who has signed the Lease.
7. Tenant agrees to maintain sufficient heat to prevent freezing of piped water. If for any reason the Tenant is unable to maintain sufficient heat, he/she shall immediately notify the PHA. Failure to notify the PHA of frozen or damaged water pipes is grounds for termination of this Lease.

G. Terms and Conditions

1. Use and Occupancy of the Dwelling Unit: Tenant shall have the right to exclusive use and occupancy of the dwelling unit for Tenant and other household members listed on Part II of this Lease Agreement. With the prior written consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit.

The PHA recognizes the Tenant's right to give reasonable accommodation to his/her guests and visitors. The tenant must notify the PHA management when a guest(s)/visitor(s) will be staying for more than fourteen (14) days. Exceptions for longer stays may be granted to the family for valid reasons which may include but not limited to: Tenant's son/daughter home on military leave; Tenant's son/daughter on college break during the holidays; care of a relative staying with the Tenant to recuperate from a medical procedure; children who are visiting in accordance with visitation privileges subject to a joint custody arrangement. Exceptions may be granted, upon Tenant's written request to the PHA, for an extension of this provision. The PHA will consider granting the exception only if the family can identify and provide documentation of the guest's or visitor's primary residence. If the PHA discovers that the guest or visitor represents the Tenant's address as his/her (guest's/visitor's) residence address for the purpose of receiving mail, benefits, or other purposes will be considered an unauthorized occupant of the unit and no future visitation will be approved for this guest/visitor. Guests/visitors who remain with the

Tenant beyond the visitation extension granted by the PHA will be considered to be occupants and their presence constitutes a violation of the Lease by the Tenant.

Any person banned from PHA property, any State lifetime sex offender registrant, or any person engaging in any criminal and/or drug-related activity will not be permitted as an overnight guest or visitor.

2. Redetermination of Rent, Dwelling Size, and Eligibility: Tenant will choose between income-based or flat rent at each annual reexamination. The rent amount as fixed in Part II of this Lease Agreement is due each month until changed as described below:

- 1) Scheduled Reexaminations

- (a) The PHA will reexamine family composition and compliance with Community Service and Self-Sufficiency Requirement (CSSR) annually of families paying flat rent. The PHA will conduct a reexamination of income and deductions at least once every three years of families who have opted to pay flat rent.
 - (b) The PHA will conduct a reexamination of income, deductions, family composition and compliance with CSSR at least once every year of families who choose to pay income-based rent.
 - (c) All adult members of the household must accompany the head of household to the recertification interview.
 - (d) Each non-exempt adult household member must contribute eight (8) hours per month of community service or eight (8) hours per month of participation in an economic self-sufficiency program, or perform a combination of eight (8) hours of community service and participation in an economic self-sufficiency program, or an aggregate total of ninety-six (96) hours completed by each annual reexamination.
- 2) Tenant agrees to supply PHA, when requested, with accurate information about: family composition, age of family members, income and sources of income for all family members, assets, community service activities, and related information necessary to determine continued eligibility, annual income, adjusted income and rent. Failure to supply such information when requested is a serious violation of the terms of the Lease and shall be grounds for termination of the Lease. All information must be verified by the PHA. Tenant agrees to comply with PHA requests for verification by signing releases for third-party verifications, presenting documents for review, or providing other suitable forms of verification. PHA shall give Tenant reasonable notice of what actions Tenant must take and of the date by which any such action must be taken for compliance under this section. This information will be used by PHA to decide whether the amount of rent should be changed and whether the dwelling size is still appropriate for Tenant's needs. This determination will be made in accordance with the Admissions and Continued Occupancy Policy, which is available for review in the PHA office.
- 3) The Tenant agrees to pay maintenance and other charges, if any, in accordance with the approved Schedule of Repairs and Other Charges and to accept a "Notice of Rent Adjustment" when delivered by the PHA.

3. Rent will not change during the period between regular reexaminations, UNLESS during such period:
 - a) Rent is based on false or incomplete information supplied by the Tenant. If it is found that Tenant has misrepresented the facts upon which the rent is based so that the rent Tenant is paying less than the rent that he/she should have been charged, the PHA will apply an increase in rent retroactive to the first of the month following the date the misrepresentation occurred;
 - b) It is found that an error was made at admission or reexamination by the PHA. (Tenant will not be charged retroactively for errors made by the PHA.);
 - c) It is impossible to verify the Tenant's income at the regular reexamination and a temporary rent was charged;
 - d) The household income or family composition has changed. The Tenant must report any and all changes in income or family composition within ten (10) calendar days of such change, and rent will be adjusted in accordance with the current PHA Admissions and Continued Occupancy Policy and HUD regulations. Failure to report within this timeframe may result in a retroactive rent charge;
 - e) Tenant can show a change in circumstances, such as loss of employment, increase in medical costs, child care costs, etc.;
 - f) Public Assistance to Tenant or household member commences or is terminated. Such change must be reported to the PHA within ten (10) calendar days. **Rent will not be reduced where there is reduction in welfare payments received because of non-compliance with an economic self-sufficiency program and/or fraud in the welfare program.** No determination with respect to rent reduction/non-reduction will occur until the public assistance provider provides written verification of the circumstances of the public assistance change;
 - g) Tenant is paying a flat rent and Tenant income is reduced or allowable deductions increased and Tenant requests a change to the income based rent. Such changes shall occur no more than once between annual reexaminations;
 - h) HUD regulations or Federal statutes require a change in rent.
4. Rent Adjustments: Tenant will be notified in writing of any rent adjustment due to the situations described above; all notices will state the effective date of the rent adjustment.
 - a) In the case of rent decrease, the adjustment will become effective the first (1st) day of the month following the date the Tenant reported the change.
 - b) In the case of rent increase, the increase will become effective in accordance with the ACOP and State law.
5. Zero Income or Temporary Rent: If a Tenant reports zero income or is placed on a temporary rent, the Tenant must report income and expenses to the PHA every ninety (90) calendar days until a regular income is established. Failure to report income and expenses to the PHA every ninety (90) calendar days as required shall be considered grounds for termination of this Lease.
6. Minimum Rent: The PHA has established a minimum rent of fifty dollars (\$50.00).
7. Minimum Rent Hardship Exemption: The minimum rent is subject to the following:
 - a) A request for a minimum rent hardship exemption must be requested in writing before the rent becomes delinquent.

- b) The PHA shall suspend the minimum rent the first of the following month because of a financial hardship which may include:
 - (1) Loss of eligibility for or awaiting an eligibility determination for a federal, state or local assistance program;
 - (2) The Tenant would be evicted because he/she is unable to pay the minimum rent;
 - (3) The income of the Tenant has decreased because of changed circumstances, including loss of employment;
 - (4) A death in the family has occurred which affects the Tenant's circumstances;
 - (5) Other circumstances which shall be determined by the PHA on a case-by-case basis.
- c) Circumstances supporting the request for a minimum rent hardship exemption must be documented by the tenant and verified by the PHA before an exemption is granted.
- d) If a Tenant requests a hardship exemption prior to the rent becoming delinquent under this section, and the PHA reasonably determines the hardship to be of a temporary nature, exemption shall not be granted during the ninety (90) day suspension period beginning on the date of the written request for exemption by the Tenant. A Tenant shall not be evicted during the suspension period for non-payment of rent. In such a case, if the Tenant thereafter demonstrates that the financial hardship circumstance is long-term and ongoing, the PHA shall retroactively exempt the Tenant from the minimum rent requirement for the ninety (90) day suspension period.
 - (1) Temporary Minimum Rent Hardship Exemption: During the suspension period, the Tenant's rent will be zero (\$0). When the hardship is determined to be temporary (90 days), the tenant will enter into a repayment agreement at the end of the suspension period for the difference between the income based rent and minimum rent.
 - (2) Long-Term Minimum Rent Hardship Exemption: If the hardship is determined to be long-term, the Tenant rent will be adjusted based on the income-based rent formula. The Tenant will not be required to repay the amount of the reduction.
- e) This section does not prohibit the PHA from taking eviction action for other Lease violations unrelated to financial hardship.

8. Transfers

- a) If the PHA determines that the size of the dwelling unit is no longer meets the PHA occupancy standards based on family composition, PHA shall send Tenant written notice. Tenant further agrees to accept a new Lease for a different dwelling unit of the appropriate size and to move to the new unit at the Tenant's expense.
- b) PHA shall move a Tenant into another unit if it is determined necessary to rehabilitate or demolish Tenant's unit. Actual costs for such moves will be paid by PHA.
- c) If a Tenant requires special unit features because of a documented disability, PHA shall modify Tenant's existing unit or transfer Tenant to another unit with the features requested at PHA's expense.
- d) A Tenant without disabilities who is housed in a unit with special features for disabled persons, must transfer to a unit without such features should a Tenant with disabilities need the unit. Reasonable costs for such moves will be paid by PHA.

- e) In the case of involuntary transfers, Tenant shall be required to move into the dwelling unit made available by the PHA. Tenant shall be given seven (7) calendar days to move following delivery of a transfer notice. Refusal to move shall be grounds for termination of the Lease.
- f) Involuntary transfers are subject to the Grievance Procedures, and no such transfers shall be made until either the time to request a grievance has expired or the grievance procedure has been completed.
- g) Emergency transfers under Violence Against Women Reauthorization Act of 2013 (VAWA).
- h) PHA will consider Tenant requests for transfers in accordance with the transfer priorities established in the Admissions and Continued Occupancy Policies.

H. PHA Obligations

PHA shall be obligated:

1. To maintain the dwelling units, project, facilities, and common areas, not otherwise assigned to a Tenant for maintenance and upkeep, in a clean and safe condition.
2. To comply with the requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety.
3. To comply with the provisions of VAWA with regard to specific protections afforded to an applicant family, tenant, and family members of tenant who is a victim of domestic violence, dating violence, sexual assault or stalking. Specific protections under VAWA include:
 - a) Tenants – Domestic Violence, Dating Violence, Sexual Assault or Stalking

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated Lease violation by the victim or threatened victim of the domestic violence, dating violence, sexual assault or stalking; or as good cause to terminate the tenancy of, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.
 - 4) Criminal Activity Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking

Criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, engaged in by a member of a tenants' household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy of, occupancy rights of, or assistance to the victim.
 - 5) Limitations of VAWA Protections
 - (1) Nothing in this section limits the authority of the PHA to evict a tenant or terminate assistance for a Lease violation unrelated to domestic violence, dating violence, sexual assault or stalking provided that the PHA does not subject such a tenant to a more demanding standard than other tenants in making the determination whether to evict, or to terminate assistance or occupancy rights;
 - (2) Nothing in this section may be construed to limit the authority of the PHA to evict or terminate assistance to any tenant or lawful occupant if the PHA can demonstrate an actual and imminent threat to other tenants, employees of the

PHA, or those providing service to the public housing assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "actual imminent threat" if they meet the following standards.

ACTUAL AND IMMENT THREAT: An actual and imminent threat consist of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- (i) The duration of the risk;
- (ii) The nature and severity of the potential harm;
- (iii) The likelihood that the potential harm will occur; and
- (iv) The length of time before the potential harm would occur.

4. To make necessary repairs to the dwelling unit.
5. To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilation, and other facilities and appliances, including elevators supplied or required to be supplied with PHA.
6. To provide and maintain appropriate receptacles and facilities (except Tenant's household container[s]) for the deposit of garbage, rubbish, and other waste to be removed from the premises.
7. To supply running water, reasonable amounts of hot water, and reasonable amount of heat at appropriate times of the year according to local custom and usage, except where the building that includes the dwelling unit is not required to be equipped for that purpose or where heat or hot water is generated by an installation within the exclusive control of Tenant and supplied by direct utility connection.
8. To inspect the dwelling unit with the Tenant before the Tenant moves in and to give the Tenant a written statement of the condition of the premises, the dwelling unit and the equipment provided with the unit.
9. To inspect the dwelling unit when the Tenant moves out and give the Tenant a written description and itemized statement of any charges for repairs beyond normal wear and tear.
10. To enforce the terms of this agreement fairly, impartially, and in good faith and not to discriminate against any tenant in the provision of services, or in any manner, on the basis of race, color, religion, sex, national origin, familial status or disability.
11. To post or make available in the Management Office copies of all rules, regulations, schedules of charges, grievance procedure and other documents and policies which are part of this agreement (by attachment or by reference). Copies may be obtained by the Tenant at his/her expense.
12. To provide the Tenant and the subject of the record a copy of any criminal conviction record or record of lifetime registration for sex offenders at such time as any adverse action (eviction action) based on such record is proposed. The household will be provided an opportunity to dispute the accuracy of such information in an appropriate forum (court, hearing or grievance procedure) before final action is taken.

13. For all aspects of the Lease and Grievance Procedures, to provide persons with disabilities reasonable accommodations to the extent necessary to provide such persons with an opportunity to use and participate in those procedures.

I. Tenant Obligations

Tenant shall be obligated:

1. To use the dwelling as the only residence for all members of the Tenant's family listed in Part II of this Lease Agreement and not to use or permit the use of the dwelling for any other purpose. This provision does not exclude the care of foster children/adults or live-in care of a member of Tenant's family, provided the accommodation of such persons conforms to PHA's Occupancy Standards, and so long as PHA has granted prior written approval for the foster child(ren) or live-in aide to reside in the unit. Tenant may also obtain permission from the PHA to engage in a legal profit making activity from his/her residence.
2. Not to assign the Lease, nor sublease the dwelling unit.
3. Not to give accommodation to boarders or lodgers.
4. Not to give accommodation to long-term guests (in excess of time specified in Section VII) without the advance written consent of PHA.
5. To refrain from the absence of any family member listed in Part II of the Dwelling Lease from the dwelling unit for more than fifteen (15) calendar days without previously informing the PHA.
6. To abide by the necessary and reasonable regulations disseminated by PHA for the benefit and well-being of the housing development and Tenants. These regulations shall be posted publicly in the project office and incorporated by reference in this Lease. Violation of such regulations constitutes a violation of the Lease.
7. To comply with the requirements of applicable State and local building or housing codes, materially affecting health and/or safety of Tenant and household.
8. To keep the dwelling unit and other such areas and appliances as assigned to Tenant for exclusive use in a clean and safe condition. This includes keeping front and rear entrances and walkways for the exclusive use of Tenant, free from hazards and trash and keeping the yard free of debris and litter. Exceptions to this requirement may be made for Tenants who have no household members to perform such tasks because of age or disability. Tenants who repeatedly fail to maintain housekeeping standards established by the PHA (as documented by maintenance inspections, pest control inspections, and other housekeeping inspections) will be required to participate in housekeeping classes. Repeated failure of housekeeping inspections shall be grounds for termination of the Lease.
9. To avoid obstructing sidewalks, areaways, galleries, passages, elevators, stairways, and to avoid using these for purposes other than going into and out of the dwelling unit.
10. To dispose of all garbage, rubbish, and other household waste in a sanitary and safe manner only in containers approved or provided by the PHA. To refrain from, and cause members of Tenant's household or guest to refrain from, littering or leaving trash in common areas.
11. To maintain utility service in the dwelling unit at all times. Failure to maintain utility service for more than twenty-four (24) hours shall be considered a serious violation and shall be grounds for termination of the Lease.

12. To use only in a reasonable manner all electrical, sanitary, heating, ventilating, air-conditioning, and other facilities and appurtenances including elevators.
13. To pay charges for excess utilities, if applicable for this dwelling unit, and other charges fourteen (14) calendar days after the PHA provides written notice of the charges.
14. To avoid overloading electrical circuits by limiting the use of electrical appliances and attachments when it appears that an overload caused by the connection of too many appliances at the same time would result in a hazardous condition.
15. To refrain from and cause household members and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, building, facilities, or common areas, and to pay reasonable charges for repairs if so caused. To pay for damages caused by fire or smoke that is a direct result of negligence on the part of the Tenant, family member or guest, as determined by the local Fire Department. Such fire and smoke damage charges shall be in the amount of the actual cost of the repair/replacement less the amount paid by insurance.
16. To refrain from removing batteries or damaging/removing the smoke detectors and/or carbon monoxide detectors.
17. To pay reactivation fees in accordance with the Schedule of Repairs and Other Charges for removal or disengagement of smoke detector or carbon monoxide detectors.
18. To act, and cause household members or guests to act in a manner that will not disturb other resident's peaceful enjoyment of their accommodations and will be conducive to maintaining all PHA projects in a decent, safe, and sanitary condition.
19. To refrain from allowing into their dwelling unit individuals that are known or should have been known by the tenant or any other member of the household to be banned from PHA property.
20. To assure that Tenant, any member of the household, a guest or any other person under Tenant's control, shall not engage in:
 - a) Any activity that threatens the health, safety, or right to other Tenants' peaceful enjoyment of the premises.
 - b) Any drug-related criminal activity in violation of the preceding sentence shall be cause for termination of tenancy and for eviction from the unit. (For the purposes of this Lease, drug-related refers to manufacture, possession, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use of a controlled substance, including methamphetamines and the supplies/equipment used to manufacture them, as defined in Section 102 of the Controlled Substances Act.)
21. Not to commit any crime of physical violence to persons or property.
22. To comply with the PHA policy implementing the Violence Against Women Reauthorization Act of 2013 (VAWA) as it pertains to any household member who is claiming to be the victim of domestic violence, dating violence, sexual assault or stalking.
23. To refrain from alcohol abuse-related behavior or activities that interferes with the health, safety, or right to peaceful enjoyment of the premises by other Tenants. Alcohol-related behavior or activities shall be considered a violation of the Lease and grounds for termination of the Lease.
24. Not to consume any alcoholic beverage or use glass containers on or in community areas.

25. To refrain from and cause members of Tenant's household or guests to refrain from acting or speaking in an abusive or threatening manner toward other residents, PHA staff, and contractors. Abusive or threatening behavior includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language (written or oral) that is customarily used to insult or intimidate.

26. To abide by local and State ordinances or laws with respect to possession and/or use of a firearm or other deadly weapons.

It shall be considered a prohibited activity, a material breach of a Tenant's Lease Obligation, and grounds for termination of this Lease, for any Tenant or anyone in the dwelling unit with the Tenant's consent to do any of the following upon PHA property:

- a) To intentionally, knowingly, or recklessly carry on or about his/her person an illegal weapon as defined by local or state law;
- b) To display a deadly weapon in connection with a verbal or non-verbal threat of bodily harm;
- c) To inflict any injury upon another person through the reckless, careless, or negligent use of a deadly weapon;
- d) To damage any property through the intentional, reckless, careless, or negligent use of a deadly weapon.

A deadly weapon shall include, but not be limited to, a club, explosive weapon, firearm, knife or knuckles as those terms are defined by the State Penal Code

27. To take reasonable precautions to prevent fires and to refrain from storing volatile or flammable materials within 3 feet from a source of ignition.

28. To make NO alterations or repairs to the dwelling unit or to the equipment, or to install additional equipment or major appliances without written consent of PHA. To make no changes to locks or install new locks or exterior doors without PHA's written approval. To use no nails, tacks, screws, brackets, or fasteners on any part of the dwelling unit (a reasonable number of picture hangers accepted) without authorization by PHA.

29. To install window A/C units in accordance with the PHA's installation criteria and only after receipt of written approval of the installation by the PHA.

30. To refrain from erecting or hanging radio or television antennas on or from any part of the dwelling unit, except that roof antennas and satellite dishes may be installed in accordance with requirements by PHA and with prior written approval by the PHA.

31. To maintain window covering in good repair and that do not detract from the appearance of the building. Cardboard, paper, bed linens, aluminum foil may not be used as window coverings.

32. To refrain from placing signs of any type on the premises except those allowed under applicable local ordinances and then only after having received written permission of PHA. All signs must be removed within 24 hours of its designated purpose.

33. To avoid blocking or obstructing any window in the dwelling unit that may be required for emergency egress.

34. Pet Policy: To abide by the PHA's Pet Policy. Tenant will not keep pets such as dogs, cats, birds, reptiles, or other animals anywhere in the complex, unless the pet has been registered with and approved by the PHA, and the family has executed a formal pet ownership agreement that becomes an attachment to this Lease, by reference. Tenants

who are persons with disabilities and have an assistance animal shall abide by the PHA's Assistance Animal Policy.

35. Vehicle and Parking Rules: To park only in areas designated for parking. Tenant agrees to remove from PHA property any inoperable vehicle or vehicle without valid registration and to refrain from parking any vehicles in any right-of-way or designated fire lane. Any inoperable or unauthorized vehicle shall be removed from PHA property at Tenant's expense. Tenant also agrees not to wash automobiles or make automobile repairs on PHA property.
36. To provide the PHA with thirty (30) calendar days advance notice of intent to vacate and terminate the Lease. The notice shall be in writing and delivered in person to the PHA or sent by U. S. Mail, properly addressed. Upon termination of this agreement, the Tenant agrees that the dwelling shall not be considered "vacated" for rental charge purposes until such time as the keys are returned and the PHA accepts the unit. Tenant may terminate the Lease with less than thirty (30) calendar days advance notice due to documented situations of domestic violence, dating violence, sexual assault, or stalking or due to military deployment of more than ninety (90) days or permanent transfer.
37. To remove any personal property when Tenant vacates, abandons or surrenders the dwelling unit.
38. To leave the dwelling unit in a clean and good condition upon vacating, reasonable wear and tear accepted.
39. To transfer to an appropriate size dwelling unit, based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.
40. To keep his/her dwelling unit in such condition as to ensure proper health and sanitation standards. **Tenant shall notify the PHA promptly of need for repairs to his/her dwelling unit**, and of known unsafe or unsanitary conditions in the dwelling unit or in common areas and grounds of the development. Tenant's failure to report the need for repairs in a timely manner shall be considered as contributing to any damage that occurs.
41. To abide by the local City curfew ordinances. Two violations of this rule shall be grounds for termination of the Lease.
42. Not to engage in profit-making activities in the dwelling unit without prior written approval by the PHA.
43. To assist in the eradication of insects and vermin (roaches, ants, mice, bed bugs, etc.). With proper notice given by the PHA, permit exterminators to enter the unit to treat for insects and vermin.
44. To allow inspection or entry of the unit upon receipt of forty-eight (48) hour written notice by the PHA.
45. Not to receive assistance for occupancy of any other unit assisted under any Federal housing assistance program during the term of the Lease.
46. Not to commit any fraud in connection with this housing assistance program.
47. To comply with the Community Service and Self-Sufficiency Requirement as described in the PHA's Community Service and Self-Sufficiency Policy. Tenant and other family members eighteen (18) years of age or older agree that any non-exempt adult family member must contribute either eight (8) hours of community service per month or participate in an economic self-sufficiency program for eight (8) hours per month, or perform a combination of eight (8) hours of community service and participation in an

economic self-sufficiency program per month. The required community service contribution or self-sufficiency participation, or combination of both activities, may be completed at 8 hours each month or aggregated throughout the year, as long as 96 hours is completed by each annual reexamination. **Non-compliance with this requirement will result in this Lease not being renewed**, subject to the Tenant/family member's right to request a hearing under the PHA's Grievance Procedures.

48. To abide by all PHA, state and local smoking or smoke-free requirements.
49. To explain these rules to all household members and guests and to be responsible for preventing their violation of any of these rules.

J. Defects Hazardous to Life, Health or Safety

The following provisions apply in the event that the dwelling unit is damaged to the extent that conditions are created that are hazardous to the life, health, or safety of the occupants:

1. PHA Responsibilities:

- a) PHA shall be responsible for repair of the unit within a reasonable period of time after receiving notice from Tenant. If the damage was caused by the Tenant, household members or guests, the reasonable costs for repairs shall be charged to the Tenant. Tenant cause of the damage shall be grounds for termination of the Lease.
- b) PHA shall offer Tenant a replacement dwelling unit, if available, if necessary repairs cannot be made within a reasonable time.
- c) In the event the PHA, cannot make repairs and alternative accommodations are unavailable, the rent shall abate in proportion to the seriousness of the damage and loss in value of the dwelling. No abatement of rent shall occur if Tenant rejects alternative accommodations or if Tenant, household members, or guests caused the damage.
- d) If PHA determines that the dwelling unit is uninhabitable because of imminent danger to the life, health, and safety of the Tenant and Tenant refuses alternative accommodations, this Lease shall be terminated, and any rent paid will be refunded to the Tenant.

2. Tenant Responsibilities:

- a) Tenant shall immediately notify the Manager of the damage and intent to abate rent when damage is not repaired or becomes sufficiently severe that Tenant believes he/she is justified in abating rent.
- b) Tenant agrees to pay full rent, less the abated portion agreed upon by PHA, during the time in which the defect remains uncorrected.
- c) Tenant shall accept any replacement unit offered by PHA.

K. Move-in and Move-out Inspections

1. Move-in inspection—PHA and Tenant or representative shall jointly inspect the dwelling unit prior to occupancy by Tenant. PHA will give Tenant a written statement of the condition of the dwelling unit, both inside and outside, and note any equipment provided with the unit. The statement shall be signed by PHA and Tenant and a copy of the statement retained in Tenant's file. PHA will correct any deficiencies noted on the inspection report, at no charge to the Tenant.

2. Move-out inspection—PHA will inspect the unit at the time Tenant vacates and provide Tenant a written statement of the charges, if any, for which Tenant is responsible. Tenant and/or representative may join in such inspection, unless Tenant vacates without notice.

L. Maintenance, Repair, and Services

1. Tenant will pay charges for maintenance and repair beyond normal wear and tear, as reflected in the current "Schedule of Repairs and Tenant Charges" posted in the Management Office.
2. "Normal wear and tear" means deterioration that results from the intended use of a dwelling, including breakage or malfunction due to age or deteriorated conditions; but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the dwelling unit, equipment, or PHA property by the Tenant, or by a member of the Tenant's household, or by a guest of the Tenant.
3. Such charges are due and payable fourteen (14) days after the PHA provides Tenant written notice that charges are due. Failure to pay such charges on the date due shall be considered a serious violation and grounds for termination of this Lease.

M. Abandonment and Abandoned Property

1. Management shall take possession of the apartment after the Tenant has moved out. If the Tenant and all other persons are absent from the dwelling unit for thirty (30) consecutive days during the Lease term or any renewal or extension period while the rent is delinquent, the PHA may deem the unit abandoned if inspection shows that all or most of the Tenant's property has been removed.
2. The PHA shall secure the dwelling unit against vandalism and attach a notice of entry to the door of said dwelling unit. If there is no response to this notice after forty-eight (48) hours, or if all the Tenant's possessions have been removed, the PHA will take possession of the dwelling unit, provided that the rent still remains unpaid.
3. Any possessions left in the dwelling unit will be removed, stored and disposed of by the PHA in accordance with State law. Tenant may reclaim their possessions at any time prior to disposition.

N. Notices

1. The PHA shall notify the Tenant of the specific grounds for any proposed adverse action by the PHA.
2. The PHA shall notify the Tenant of the opportunity for a hearing under the PHA's Grievance Procedures for a grievance concerning a proposed adverse action except for:
 - a) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
 - b) Any violent or drug-related criminal activity on or off such premises; or
 - c) Any criminal activity that resulted in felony conviction of a household member.
3. The notice of proposed adverse action shall inform the Tenant of the right to request such hearing. In the case of a Lease termination/demand for possession, a "notice of Lease termination/demand for possession" shall constitute adequate notice of proposed adverse action.

4. In the case of a proposed adverse action other than a Lease termination/demand for possession, the PHA shall not take a proposed action until the time for the Tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the Tenant) the grievance process has been completed.

O. Notice Procedures

1. Tenant Responsibility: Any notice to PHA must be in writing, delivered to the Management Office or Project Office, or sent by first-class mail, properly addressed.
2. PHA Responsibility: Notice to Tenant must be in writing, delivered to the Tenant or to any adult household member, or sent by first-class mail addressed to Tenant.
3. Unopened, cancelled, first-class mail returned by the Post Office shall be sufficient evidence that notice was given.
4. If Tenant is visually impaired, all notices will be in accessible format.

P. Termination of the Lease

1. This lease may be terminated for the following reasons:
 - a) For serious or repeated violations of material terms of the Lease, or for other good cause. Such serious or repeated violation of terms shall include, but are not limited to:
 - 1) The failure to pay rent or other payments when due.
 - 2) Repeated late payment, which shall be defined as failure to pay the amount of rent or other charges due by the fifth (5th) of the month. Four such late payments within a twelve (12) month period shall constitute a repeated late payment.
 - 3) Failure to fulfill household obligations as described in Tenant Obligations of this lease.
 - b) Other Good Causes
 - 1) Criminal activity or alcohol abuse;
 - 2) Discovery after admission of facts that made the tenant or any household member ineligible;
 - 3) Discovery of material false statements or fraud by the tenant in connection with the application for assistance or reexamination of income and household members;
 - 4) Failure of a family member to comply with the Community Service and Self-Sufficiency Requirement; and
 - 5) Failure to accept the PHA's offer of a lease revision to an existing lease when the revised lease has been properly adopted by the PHA and a written notice of the offer of the revisions was given at least 60 calendar days before the lease revision is scheduled to take effect, and with the offer specifying a reasonable time limit within that period for acceptance by the family.
 - c. Being Over the Income Limits

2. PHA shall give written notice of the proposed termination of the Lease of:
 - a) Fourteen (14) days in the case of failure to pay rent.
 - b) A reasonable time, but not to exceed thirty (30) calendar days, considering the seriousness of the situation, when the health and safety of other tenants of PHA staff is threatened.
 - c) Thirty (30) calendar days in any other case.
3. The notice of termination:
 - a) The notice of termination to the Tenant shall state specific reasons for the termination, shall inform the Tenant of his/her right to make such reply as he/she may wish, and Tenant's right to examine PHA documents directly relevant to the termination and/or eviction.
 - b) When PHA is required to offer Tenant the opportunity for a grievance hearing, the notice shall also inform Tenant of the right to request such hearing in accordance with PHA's Grievance Procedures.
 - c) Any notice to vacate (or quit) that is required by State or local law may be combined with, or run concurrently with the notice of Lease termination under this section. The Notice to Vacate must be in writing and specify that if Tenant fails to quit the premises within the applicable statutory period, appropriate action will be brought against Tenant, and Tenant may be required to pay the court costs and attorney's fees.
 - d) When PHA is required to offer Tenant the opportunity for a grievance hearing concerning the Lease termination, the tenancy shall not terminate until the period to request a hearing has expired or the grievance process has been completed.
 - e) When PHA is not required to offer Tenant the opportunity for a hearing under the grievance procedures and PHA has decided to exclude such grievance from PHA's Grievance Procedures, the notice of termination shall (a) state that Tenant is not entitled to a grievance hearing on the termination; (b) specify the judicial eviction procedure to be used by PHA for eviction and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in a court that contains the basic elements of due process as defined in HUD regulations; and (c) state whether the eviction is for criminal activity that threatens health and safety of other tenants and staff or for drug-related criminal activity.
 - f) PHA may only evict Tenant from dwelling unit by bringing a court action or by bringing an administrative action where allowed by State law.
4. Tenant may terminate this Lease at any time by giving thirty (30) calendar days written notice properly addressed and delivered to the PHA.
5. When a PHA evicts a Tenant from a dwelling unit for criminal activity, PHA shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the unit so the post office will no longer deliver mail for such persons and they will no longer have reason to return to the unit.
6. PHA shall seek judgement for tenant to pay all court costs, expenses, and attorney fees incurred in enforcing this Lease or in recovering possession of the dwelling unit, unless the Tenant prevails in such legal action.
7. This Lease Agreement shall terminate upon abandonment of the premises by the Tenant.

8. Default Options: If the Tenant violates any term or obligation under this Lease, or has misrepresented any material fact to the PHA, then the PHA shall have the right, at its option, to pursue any of the following remedies:
 - a) Civil suit for collection of any amount that may be owed to the PHA in the form of rent, utility surcharges, or for damage to its property;
 - b) Evict the Tenant and all members of the household;
 - c) Seek criminal prosecution, if appropriate;
 - d) Refer the Tenant to a collection agency for collection of any amount due and not paid;
 - e) Report any amount due by the Tenant to the PHA to a credit bureau;
 - f) Report to HUD any debt owed or any eviction; and
 - g) Recommend administrative sanctions by HUD.

Q. Bifurcation of Lease

Under the authority provided in Section 6(l)(6)(B) of the United States Housing Act of 1937, as amended (42 U.S.C. §1437d(1)(6)(B)), and notwithstanding any Federal, State, or local law to the contrary, PHA may bifurcate or separate this Lease in order to evict, remove, or terminate the assistance to any individual who is a Tenant or a lawful occupant under this Lease and who engages in criminal acts of physical violence against family members or others, including domestic violence, dating violence, sexual assault, or stalking. The PHA may take such action without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such violence who is the Tenant or a lawful occupant under this Lease.

R. Modification of the Lease

1. This Lease and all policies, rules, and charges which are a part of this Lease by attachment or by reference may be modified from time to time by the PHA, provided the PHA gives at least a thirty (30) calendar day written notice to Tenants, setting forth the opportunity to present written comment which shall be taken into consideration by the PHA prior to the proposed modification becoming effective. A copy of such notice shall be either delivered or mailed to each Tenant or posted in at least three (3) conspicuous places within each structure or building, as well as the Management Office, or if none, the Central Office of the PHA.
2. This Lease together with any attachments, future adjustment of rent or dwelling unit evidences the entire agreement between the PHA and the Tenant. No changes herein shall be made except those in writing, and signed and dated by both parties, except for Section G Terms and Conditions. However, nothing shall preclude the PHA from modifying this Lease to take into account revised provisions of law or government actions.

S. Accommodation of Persons with Disabilities

A person with disabilities shall for all purposes under this Lease be provided reasonable accommodation to the extent necessary to provide such person with an opportunity to use and occupy the unit in a manner equal to that of a person who is not disabled. This paragraph shall constitute notice, that the Tenant may at any time during the term or any renewal hereof request a reasonable accommodation for a of a household member with a disability. Tenant shall be required to provide verification that the accommodation requested is necessary due to the disability.

T. Solicitation, Trespassing, and Exclusion of Non-Residents

The PHA is committed to providing a decent, safe and sanitary environment throughout the PHA's property. The PHA reserves the right:

1. To regulate solicitation and prohibit trespassing on PHA property by non-Tenants of the PHA.
2. To exclude non-residents, including but not limited to, persons who: (1) conduct themselves in a manner disturbing residents' peaceful enjoyment of their dwellings, community facilities, common areas or other locations within the PHA's property; (2) engaging in illegal or other activity impairing the physical and social environment of the PHA premises; (3) engage in any activity threatening the health, safety, or peaceful enjoyment of the PHA premises by residents of the PHA, employees of the PHA, or other persons lawfully on the premises; or (4) damage or threaten to damage the property of residents or of the PHA.

U. Waiver

No delay or failure by PHA in exercising any right under this Lease agreement, and no partial or single exercise of any such right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

TENANT AGREES THAT ALL PROVISIONS OF THIS LEASE AGREEMENT HAVE BEEN READ AND ARE UNDERSTOOD AND FURTHER AGREES TO BE BOUND BY ITS PROVISIONS AND CONDITIONS AS WRITTEN. (SIGNATURE REQUIRED ON PART II OF THIS LEASE AGREEMENT.)

Z:\2017\Authority Plans and Policies\Non Partners\Alamogordo, NM\Authority Policies\ACOP\Final Dwelling Lease for HA City of Alamogordo on 1_13_2017 .docx

Part II: Residential Lease Agreement

This Agreement is executed between the _____
(called PHA) and _____ (called Tenant), and becomes effective as of _____.

- 1. Unit:** That the PHA relying upon the representations of Tenant as to Tenant's income, household composition and housing need, Leases to Tenant, upon Terms and Conditions set forth in Part I of this Lease Agreement, the dwelling unit LOCATED AT: _____
_____ (called the Dwelling Unit) to be occupied exclusively as the private residence by Tenant and household.
- 2. Household Composition:** The Tenant's household is composed of the individuals listed below. Additions and deletions after initial execution of the Lease are to be recorded below as they are approved.

Name	Relationship	Date of Birth	Social Security Number	Add or Delete	HoH Signature	PHA Signature	Date of Change
1.	HoH						
2.							
3.							
4.							
5.							
6.							
7.							
8.							

PHA approved live-in aides are not listed on this lease as they are not party to the lease.

- 3. Term:** The term of this Lease shall be one (1) calendar year, renewed as stipulated in Part I of this Lease.
- 4. Rent:** Initial rent (prorated for partial month) shall be \$_____.

A Utility Reimbursement, if applicable, (prorated for partial month) shall be paid to the tenant or the utility provider.

Thereafter, rent in the amount of \$_____ per month shall be payable in advance on the 1st day of each month, and shall be delinquent after the fifth (5th) day of said month.

☐ This is the flat rent for the Dwelling Unit

☐ This is the rent based on income and other information reported by the Tenant.

- 5. Payments:** A late charge of 10% of rent due shall be due and payable for all rent payments not received within the first five (5) days of the month, unless the resident has been issued a written authorization for such late payment by the PHA. Repeated late payment of rent shall be considered grounds for termination of this Lease.

- 6. Utilities and Appliances:** PHA supplied utilities are indicated by an (X) below; PHA provides the indicated utility as part of the rent for the premises:

() Electricity () Natural Gas () Heating Fuel () Water () Sewer
 () Trash Collection
 () Other: _____

PHA supplied appliances are indicated by an (X) below:

() Cooking Range () Refrigerator () Other: _____

- 7. Utility Allowance:** If Tenant pays any utilities directly to the supplier, the PHA will provide a utility allowance in the amount of \$ _____. If Tenant's income based rent is less than the utility allowance, the amount of the utility reimbursement which is \$ _____, will be paid to _____.

- 8. Surcharges for Additional Appliances:** When PHA supplies electricity, charges for additional appliances are due per the following:

Air Conditioners: An additional surcharge of \$ _____ per month will be payable for each air conditioner in the dwelling unit for each month of occupancy.

Other Major Appliances: If checked below, an additional surcharge of \$ _____ per month for each month of occupancy for each additional appliance on/in the dwelling unit.

() Freezer () Extra Refrigerator
 () Second TV () Electric Space Heater
 () Washer () Dryer
 () Other: _____

- 9. Security Deposit:** Tenant agrees to pay \$ _____ as a security deposit. See Part I of this Lease Agreement for information on treatment of the Security Deposit.

- 10. Lead Safety:** The PHA will provide Tenant with a Lead Hazard Information Pamphlet, and a Lead Disclosure Addendum (if applicable).

- 11. Violence Against Women Act (VAWA):** The PHA will provide the Tenant the Notice of Occupancy Rights under the Violence Against Women Act.

- 12. Incorporated by Reference as Part of this Lease:** The following policies, procedures and rules are incorporated by reference in this Lease: Pet Policy, Assistance Animal Policy, Community Service and Self-Sufficient Requirement Policy, Housekeeping Standards Policy, Grievance Procedures, Admissions and Continued Occupancy Policy, Schedule of Repairs and Other Charges, House Rules and Other: _____. Current copies are posted in the PHA office and incorporated in the PHA Plan. These documents may be updated from time to time without nullifying this Lease. These documents may be viewed during regular office hours. Single copies are available upon request.

- 13. Warranties and Representations by the Tenant:** The Tenant warrants and represents that he/she has not (a) failed to repay a previous debt to the PHA, committed fraud in connection with any HUD programs, or failed to disclose previously committed fraud in connection with any HUD program; (b) provided false information on the application; (c) been previously evicted for non-payment of rent, breach of Lease, or use of a unit for illegal purposes; (d) had history of criminal or other acts that would adversely affect the health, safety or welfare of

other tenants; (e) refused or failed to complete required forms or to supply requested information. False statements affecting any eligibility criteria or which result in inaccurate calculation of Total Tenant Payment or Tenant Rent shall be grounds for immediate termination of this Lease and eviction from PHA property.

14. PHA's Commitment to Investigate Misrepresentations and Pursue Remedies: The PHA will investigate allegations, complaints or other observations that indicate a Tenant may be receiving benefits for which they are not eligible. The PHA will vigorously pursue false statements that result in the Tenant paying less rent than required or the PHA overpaying rental assistance. After verification of these misrepresentations, the PHA will take all necessary steps to recover the over payments, including administrative actions, or civil or criminal court actions, or judgment, as it deems appropriate.

15. Execution: By Tenant's signature below, Tenant and all household members agree to the terms and conditions of Part I and II of this Lease Agreement and all additional documents made a part of the Lease by reference. *This Lease must be executed by all household members age eighteen (18) and older.*

Any person who obtains or attempts to obtain, or who establishes or attempts to establish, eligibility for and any person who knowingly or intentionally aids or abets such person in obtaining or attempting to obtain housing, or a reduction in public housing rental charges, or any rent subsidy, to which such person would not otherwise be entitled, by means of a false statement, failure to disclose information, impersonation, or other fraudulent scheme or devise shall be guilty of a crime. Upon conviction, such person may be fined and/or imprisoned under the laws and statutes of the State of New Mexico.

By the signatures below I/we also acknowledge that the Provisions of Part I of this Lease Agreement have been received and thoroughly explained to me/us.

Head of Household _____ Date _____

Spouse or Co-Head _____ Date _____

Other Adult Household Member _____ Date _____

Other Adult Household Member _____ Date _____

Other Adult Household Member _____ Date _____

Other Adult Household Member _____ Date _____

PHA Manager _____ Date _____

Tenant's Certification

I, _____ hereby certify that I, and other members of my Household, have not committed any fraud in connection with any federal housing assistance program, unless such fraud was fully disclosed to PHA before execution of this Lease or before PHA approval for occupancy of the unit by the Household member.

I further certify that all information or documentation submitted by myself or other Household members to PHA in connection with any federal housing program (before and during the Lease term) are true and complete to the best of my knowledge and belief.

Head of Household Signature

Date

Attachments

If indicated by an (X) below, PHA has provided Tenant with the following attachments and information:

- ☐ Part I of this Lease Agreement
- ☐ Schedule of Repairs and Other Charges (which may be updated by posting)
- ☐ Lead Hazard Information Pamphlet
- ☐ Lead Disclosure Addendum, if applicable
- ☐ Notice of Occupancy Rights under the Violence Against Women Act
- ☐ Community Service and Self-Sufficiency Requirement Policy
- ☐ Grievance Procedures
- ☐ House Rules
- ☐ Housekeeping Policy
- ☐ Pet Policy

☐ Assistance Animal Policy

☐ Other: _____

Reference

Current copies of the following policies, procedures and rules referenced in the Lease are posted in the PHA office and incorporated in the PHA Plan. These documents may be updated from time to time. They may be viewed during regular office hours. Single copies are available upon request.

- Admissions and Continued Occupancy Policy
- Utility Allowance Schedule
- Flat Rent Schedule
- Other: _____

Part III. Disclosure Form for Target Housing Rentals and Leases

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

A. Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

B. Lessor's Disclosure (initial)

_____ (a) Presence of lead-based paint or lead-based paint hazards (check one below):

- ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

- ☐ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

_____ (b) Records and reports available to the lessor (check one below):

- ☐ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

- ☐ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

C. Lessee's Acknowledgment (initial)

_____ (c) Lessee has received copies of all information listed above.

_____ (d) Lessee has received the pamphlet *Protect Your Family From Lead in Your Home*.

D. Agent's Acknowledgment (initial)

_____ (e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

E. Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

NOTICE

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that the Housing Authority's general counsel and/or attorney review this policy prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/17/2018

Report No: 7.

Submitted By: Evelyn Huff

Subject: Consider, and act upon, Resolution 2018-18 approving the Housing Authority's Five-Year Capital Fund Plan, HUD Form 50075.2. *(Evelyn Huff, Housing Authority Manager)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the resolution

Background: The Department of Housing and Urban Development (HUD) requires that every five years, a Housing Authority develops a Five Year Capital Fund Plan. This plan outlines the future needs for the properties. Housing Authorities use the Physical Needs Assessment (PNA), federal inspections, tenant input and other observations to develop this five year plan. Housing Authorities are instructed to list many items in each year, however most items will not be funded. Any non-funded items maybe be moved to future years without revising the entire plan.

The Housing Authority Advisory Board has reviewed and approved this plan.

RESOLUTION NO. 2018-18

**A RESOLUTION REQUESTING APPROVAL OF THE HOUSING AUTHORITY 2018-2022 FIVE
YEAR CAPITAL PLAN, HUD FORM 50075.2**

WHEREAS; the Department of Housing and Urban Development require that all Housing Authorities develop a Five-Year Capital Plan in order to receive funding from the HUD Capital Funds;

WHEREAS; the current Five-Year Capital Plan is for 2014-2018 and expires soon;

WHEREAS; the new Five-Year Capital Plan is for 2018-2022;

WHEREAS; the work items in the Five-Year Capital Plan are determined by reviewing the physical needs assessment, federal inspections and staff and tenant input;

WHEREAS; the Housing Authority Advisory Board has recommended the approval of the Five-Year Capital;

BE IT THEREFORE RESOLVED by the City Commission of the City of Alamogordo, New Mexico; that the Housing Authority Five-Year Capital Plan, Form 50075.2, is approved

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Alamogordo this 24th day of April, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico Municipal Corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

Capital Fund Program—Five-Year Action Plan

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Expires 4/30/2011

Part I: Summary						
PHA Name/Number Housing Authority of the City of Alamogordo		Locality (City/County & State) Alamogordo/Otero County, New Mexico		☒ Original 5-Year Plan Revision No:		
A.	Development Number and Name	Work Statement for Year 1 FFY <u>2018</u>	Work Statement for Year 2 FFY <u>2019</u>	Work Statement for Year 3 FFY <u>2020</u>	Work Statement for Year 4 FFY <u>2021</u>	Work Statement for Year 5 FFY <u>2022</u>
B.	Physical Improvements Subtotal	Annual Statement	\$640,000	\$740,000	\$854,500	\$820,000
C.	Management Improvements					
D.	PHA-Wide Non-dwelling Structures and Equipment					
E.	Administration					
F.	Other					
G.	Operations					
H.	Demolition					
I.	Development					
J.	Capital Fund Financing – Debt Service					
K.	Total CFP Funds					
L.	Total Non-CFP Funds					
M.	Grand Total		\$640,000	\$740,000	\$854,500	\$820,000

Capital Fund Program—Five-Year Action Plan

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Expires 4/30/2011

Part I: Summary (Continuation)

PHA Name/Number Housing Authority of the City of Alamogordo		Locality (City/county & State) Alamogordo/Otero County, New Mexico		☒ Original 5-Year Plan Revision No:		
A.	Development Number and Name	Work Statement for Year 1 FFY <u>2018</u>	Work Statement for Year 2 FFY <u>2019</u>	Work Statement for Year 3 FFY <u>2020</u>	Work Statement for Year 4 FFY <u>2021</u>	Work Statement for Year 5 FFY <u>2022</u>
	NM004-P000001 Alta Vista	Annual Statement	\$515,000	\$75,000	\$737,500	\$360,000
	NM004-P000001 Plaza Hacienda		\$125,000	\$660,000	\$117,000	\$460,000
	NM004-P000001 2408 Cuba			\$5,000		
	Physical Improvements Subtotal		\$640,000	\$740,000	\$854,500	\$820,000

Part II: Supporting Pages – Physical Needs Work Statement(s)						
Work Statement for Year 1 FFY 2018	Work Statement for Year <u>2</u> FFY <u>2019</u>			Work Statement for Year: <u>3</u> FFY <u>2020</u>		
	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost
See	NM004-P000001 Alta Vista Replacement of Roofs – Remove old shingles and decking. Repair incorrectly installed trusses. Install new decking and shingles on 7 remaining dwelling structures	14	\$200,000	NM004-P000001 Plaza Hacienda Replace Windows - Remove and replace existing inefficient windows and frames. Install new energy efficient windows and frames in all 150 units	150	\$600,000
Annual	NM004-P000001 Plaza Hacienda Replacement of Roofs – Remove old shingles and decking. Repair any damaged areas. Install new shingles on 2 non-dwelling buildings	2	\$65,000	NM004-P000001 Plaza Hacienda Plumbing Upgrades – Repair damaged or collapsed plumbing	5	\$60,000
Statement	NM004-P000001 Plaza Hacienda Plumbing Upgrades – Repair damaged or collapsed plumbing	5	\$60,000	NM004-P000001 2408 Cuba Replace Windows - Remove and replace existing inefficient windows and frames. Install new energy efficient windows and frames	1	\$5,000
	NM004-P000001 Alta Vista Replace Windows – Remove and replace existing inefficient windows and frames. Install new energy efficient windows and frames in all 70 units	70	\$315,000	NM004-P000001 Alta Vista Repair Soffit and Siding – Remove water damaged and rotted soffit. Replace soffit and damaged siding	35	\$75,000
	Subtotal of Estimated Cost		\$640,000	Subtotal of Estimated Cost		\$740,000

**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Expires 4/30/2011**

Work Statement for Year 1 FFY 2018	Work Statement for Year <u>4</u> FFY <u>2021</u>			Work Statement for Year: <u>5</u> FFY <u>2022</u>		
	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost	Development Number/Name General Description of Major Work Categories	Quantity	Estimated Cost
See	NM004-P000001 Alta Vista Replacement of Sidewalks – Remove old sidewalks, curbs and gutters. Replace with new ADA compliant sidewalks, curbs and gutters including new parking lots	1	\$650,000	NM004-P000001 Alta Vista Installation of Street Lights at Alta Vista – Install poles and street lights on the property as a whole	1	\$320,000
Annual	NM004-P000001 Alta Vista Repair Spalling on Foundations – Repair the cracks in the in foundations with several different methods on all 35 buildings	35	\$87,500	NM004-P000001 Plaza Hacienda Replace Wall Heaters – Remove old wall heaters in efficiency units. Install new wall heaters in units.	50	\$60,000
Statement	NM004-P000001 Plaza Hacienda Replacement of Storm Doors – Replace front and back storm doors on all 150 units	150	\$57,000	NM004-P000001 Plaza Hacienda Kitchen Remodel – Remodel the kitchen to allow for a full-size stove and new cabinets	150	\$400,000
	NM004-P000001 Plaza Hacienda Plumbing Upgrades – Repair damaged or collapsed plumbing	5	\$60,000	NM004-P000001 Alta Vista Installation of Exhaust Fans – Install exhaust fans in the bathrooms	70	\$40,000
	Subtotal of Estimated Cost		\$854,500	Subtotal of Estimated Cost	\$820,000	

Part III: Supporting Pages – Management Needs Work Statement(s)				
Work Statement for Year 1 FFY 2018	Work Statement for Year <u>2</u> FFY <u>2019</u>		Work Statement for Year: <u>3</u> FFY <u>2020</u>	
	Development Number/Name General Description of Major Work Categories	Estimated Cost	Development Number/Name General Description of Major Work Categories	Estimated Cost
See				
Annual				
Statement				
	Subtotal of Estimated Cost	\$0.00	Subtotal of Estimated Cost	\$0.00

Part III: Supporting Pages – Management Needs Work Statement(s)				
Work Statement for Year 1 FFY 2014	Work Statement for Year <u>4</u> FFY <u>2021</u>		Work Statement for Year: <u>5</u> FFY <u>2022</u>	
	Development Number/Name General Description of Major Work Categories	Estimated Cost	Development Number/Name General Description of Major Work Categories	Estimated Cost
See				
Annual				
Statement				
	Subtotal of Estimated Cost	\$0.00	Subtotal of Estimated Cost	\$0.00

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/19/2018

Report No: 8.

Submitted By: Michelle Brideaux

Subject: Approve the Lodger's Tax Expenditures for Tourism & Travel. (*Michelle Brideaux, Communications & Marketing Administrator*)

Fiscal Impact: \$497.26

Amount Budgeted: \$225,136.00

Fund: 016-0001-419.56-35

Additional Fiscal Impact:

Recommendation: Approve the recommended expenditures for Tourism and Advertising Promotions.

Background: The following are a list of the expenditures in need of approval. The invoices are attached for your review.

Alamogordo Chamber of Commerce Postage Reimbursement - AARP Ad Response for the Months of November - February 2018

Inv#376 \$379.50

Inv#381 \$117.76

TOTAL: \$497.26



Alamogordo Chamber of Commerce

1301 N. White Sands Blvd.
Alamogordo NM 88310

Invoice

Date	Invoice #
11/3/2017	376

Bill To

City of Alamogordo
Accounts Payable
1376 E 9th St
Alamogordo, NM 88310

Terms

Due Upon Receipt

Description	Qty	Rate	Amount
Postage for AARP Visitor Guide Mailings 10/12/17 thru 11/3/17	825	0.46	379.50
RECEIVED MAR 27 2018 CITY OF ALAMOGORDO ACCOUNTS PAYABLE DEPT Approved @ 4/11/18 Poma Board meeting			
Thank you!			Balance Due \$379.50

FOR YOUR CONVENIENCE YOU CAN NOW PAY BY PHONE WITH VISA, MASTERCARD OR DISCOVER.. PLEASE CALL 437-6120 FOR A SAFE AND SECURE TRANSACTION.

Phone #

575-437-6120



Alamogordo Chamber of Commerce

1301 N. White Sands Blvd.
Alamogordo NM 88310

Invoice

Date	Invoice #
2/7/2018	381

Bill To
City of Alamogordo Accounts Payable 1376 E 9th St Alamogordo, NM 88310

Terms
Due Upon Receipt

Description	Qty	Rate	Amount
Postage for AARP Visitor Guide Mailings 11/4/17 thru 2/5/18	256	0.46	117.76
RECEIVED MAR 27 2018 CITY OF ALAMOGORDO ACCOUNTS PAYABLE DEPT Approved @ 4/11/18 Pam Board meeting			
Thank you!		Balance Due	\$117.76

FOR YOUR CONVENIENCE YOU CAN NOW PAY BY PHONE WITH VISA, MASTERCARD OR DISCOVER.. PLEASE CALL 437-6120 FOR A SAFE AND SECURE TRANSACTION.

Phone #
575-437-6120

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/19/2018

Report No: 9.

Submitted By: Michelle Brideaux

Subject: Consider, and act upon, Resolution No. 2018-23 supporting the New Mexico Department of Tourism Cooperative Marketing grant application for the Alamogordo Promotions Board. *(Michelle Brideaux, Communications & Marketing Administrator)*

Fiscal Impact: \$46,575

Amount Budgeted: \$0.00

Fund: 016

Additional Fiscal Impact: The budget for Fund 16 is an estimate of the revenues received through the Lodger's Tax, the FY2017 budget is \$230,000. Lodger's tax receipts have been increasing by 6% on average over the past 3 years. The funds to match the grant are already planned for in our annual budget and this grant will allow us to place more ads, larger ads and work with a digital advertising firm that would not normally work with an organization/budget as small as ours. We also have verbal commitments from local tourism attractions for a financial contribution to our grant match. We will also receive a design credit of \$500 per ad since we work with an approved NM True Ad Firm.

Recommendation: Approve Resolution 2018-23.

Background: By approving this resolution, the City Commission will voice support for the annual cooperative marketing grant proposal through the New Mexico Department of Tourism. Each year, the New Mexico Department of Tourism assists nonprofits, local and tribal governments by awarding grant funding for direct marketing costs in an effort to assist in promoting tourism in the state of New Mexico and local communities.

The objective of the grant proposal as written is to work in collaboration with different entities within the City of Alamogordo and surrounding areas to both collectively promote the region and the state of New Mexico. If awarded, collaborators will be required to contribute to the marketing project expenses proportional to 50% of the awarded grant. Funds for this matching grant will come from Fund 16 (Lodger's Tax) and contributions from collaborators. The City of Alamogordo will act as the fiscal agent for this proposal.

RESOLUTION NO. 2018-23

**A RESOLUTION SUPPORTING THE NEW MEXICO
DEPARTMENT OF TOURISM
COOPERATIVE MARKETING GRANT PROGRAM**

WHEREAS, the New Mexico State Legislator appropriated funds to the New Mexico Tourism Department (“Department”), which purpose includes providing a coordinated Statewide perspective in regard to tourism activities; and,

WHEREAS, the Department's mission is to elevate New Mexico as a primary destination; and,

WHEREAS, the Department desires to coordinate Statewide perspective by leveraging nonprofits, local governments, and tribal governments, tourism advertising and has established the Cooperative Marketing Grant Program; and,

WHEREAS, the Department's Cooperative Marketing Grant Program is an annual competitive matching funds program which offers successful applicants to receive (50%) of the project eligible expenses as a grant award; and,

WHEREAS, the City Commission of the City of Alamogordo of Otero County, State of New Mexico recognizes the need for having collaborative marketing programs that help provide advertising and promotional services to promote tourism to the City of Alamogordo in the State of New Mexico; and,

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Alamogordo, that the Cooperative Marketing Grant application is hereby supported and endorsed,

BE IT FURTHER RESOLVED that the City Commission there by request the New Mexico Department of Tourism Cooperative Market and Grant sector to consider and approve the City of Alamogordo’s Grant application.

PASSED, APPROVED AND ADOPTED this the 24th day of April 2018

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber , City Attorney

NMTD Co-Op Program FY19

SUMMARY



Partner Organization Name:	City of Alamogordo
Applicant/Primary Contact Name:	Michelle Brideaux
Email:	mbrideaux@alamogordo.ci.nm.us

	TOTAL MEDIA VALUE	NMTD CONTRIBUTION (REQUEST)	PARTNER CONTRIBUTION	MMP PARTNER \$ DUE 7/9/18	MMP PARTNER \$ DUE 12/10/18
<u>MEDIA MENU PROGRAM (MMP) OPT-IN SELECTIONS</u>		<i>(includes Ad Design Credit requests)</i>	<i>(Net of Ad Design Credits requested)</i>		
MMP DIGITAL Display Email Radio	\$23,000	\$12,500	\$10,500	\$4,750	\$5,750
MMP VIDEO & NATIVE CONTENT	\$0	\$0	\$0	\$0	\$0
MMP OUT-OF-HOME & AIRPORT	\$20,700	\$12,350	\$8,350	\$8,350	\$0
MMP PRINT	\$40,450	\$21,725	\$18,725	\$18,725	\$0
MMP CREATIVE PRODUCTION	\$0	\$0	\$0	\$0	\$0
TOTAL MMP	\$84,150	\$46,575	\$37,575	\$31,825	\$5,750
<u>FLEX FUND REQUESTS</u>	\$0	\$0	\$0		
GRAND TOTAL	\$84,150	\$46,575	\$37,575		

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/03/2018

Report No: 10.

Submitted By: Rachel Hughs

Subject: Discussion on F-4 Static Display Location. *(Armando Quinones, Airborne Memorial Representative, Brian Cesar, Assistant City Manager and Jim Talbert, Airport Manager)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Armando Quinones the representative from the Airborne Park, Brian Cesar Assistant City Manager and Jim Talbert Airport Manager will be giving information regarding the plans for the F-4 display. From the time that the City of Alamogordo takes possession of the aircraft we have one year to display it in the permanent location.



RECEIVED
MAR 28 2018
CITY CLERK

City of Alamogordo City Commission Meeting

AGENDA REQUEST FORM

6 2

Date: 3/28/18

Date of Meeting: 4/10/18

Name: Charles Gonzales On behalf of Armando Quinones

Address: 2300 Pecan Dr
Alamogordo, New Mexico ZIP 88310

Phone Number: (575) 495-8229

E-Mail Address: _____

Item requested will be for: (Please check one)

- | | | |
|--|--------------------------------------|---|
| ☒ Information only | ☐ Action Item | ☒ Discussion/Action |
| ☐ Public Hearing | ☐ Report | ☐ Other: _____ |

Brief description of topic to be discussed:

Please attach one original of any documents pertaining to the topic -

We do not allow handouts at the meeting

Discussion will be on the type of aircraft
that is going to be displayed by the Alamogordo
Airborne Memorial

Signature: Charles A Gonzales

Please return to: Rachel Hughs, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4205

Fax: (575) 439-4396

E-mail: rhughs@ci.alamogordo.nm.us

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/17/2018

Report No: 11.

Submitted By: Nancy Beshaler

Subject: Consider, and act upon, approval of change order 6 for \$6,741.61, including NMGR, to White Sands Construction Company related to the Family Recreation Center Locker Room Renovations. *(Nancy Beshaler, Project Manager)*

Fiscal Impact: \$6,741.61

Amount Budgeted: \$167,000.00

Fund: 119-6199-990.63-91 (EN1607)

Additional Fiscal Impact:

Recommendation: Approve change order 6 for \$6,741.61, including NMGR, to White Sands Construction Company related to the Family Recreation Center Locker Room Renovations.

Background: This project is to construct upgrades to all interior finishes in the men's and women's locker rooms at the Family Recreation Center. It includes new plumbing, light fixtures, and HVAC system. This change order adds an ADA opener to the new doors that go into the pool area.

**CONTRACT CHANGE ORDER
CHANGE ORDER NO. 6**

**Family Recreation Center Renovations (EN1607)
Public Works Bid No. 2017-012**

DATE: **April 5, 2018**

CONTRACTOR: White Sands Construction Company
 1700 10th Street
 Alamogordo, NM 88310

OWNER: City of Alamogordo
 1376 E. Ninth Street
 Alamogordo, NM 88310

THE FOLLOWING CHANGES ARE HEREBY MADE TO THE CONTRACT DOCUMENTS:

Install ADA Opener for pool entrance door. Add power to exhaust fan.

Total Change Order 6 **with tax** = \$6,242.23 plus \$499.38 (8% tax) = **\$6,741.61**

REVISED CONTRACT AMOUNT

***excludes New Mexico Gross Receipts Tax**

- | | |
|--|----------------|
| 1. Original Contract Amount | \$331,900.00* |
| 2. Total Contract Amount Including Previously
Approved Change Orders..... | \$375,099.76* |
| 3. Amount of this Change Order (Increase) | \$ 6,242.23* |
| 4. Total Revised Contract Amount, To Date..... | \$381,341.99* |
| 5. Original Contract Substantial Completion Date..... | April 14, 2018 |
| 6. Revised Completion Date..... | April 19, 2018 |

*without NMGRT

The work covered by this change order shall be performed under the same terms and conditions as that included in the original contract.

**CONTRACT CHANGE ORDER
CHANGE ORDER NO. 6**

**Family Recreation Center Renovations (EN1607)
Public Works Bid No. 2017-012**

CHANGE ORDER RECOMMENDED:

BY: 

David W. Clarke, Architect

4/6/2018

Date

CHANGE ORDER ACCEPTED:

BY: 

White Sands Construction, Contractor

4/9/2018

Date

CHANGE ORDER APPROVED:

BY: _____
Brian Cesar, Assistant City Manager

Date

BY: _____
Petria Schreiber, City Attorney

Date

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/11/2018

Report No: 12.

Submitted By: Maggie Paluch

Subject: Discussion and possible direction to staff on scheduling a joint meeting with the Otero County Commission. *(Maggie Paluch, City Manager)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: Commissioner Rardin expressed interest in meeting with the Otero County Commission to discuss various items. The County Manager indicated the topics that the County Commissioners would like to speak about are, Desalination Plant, PSAP, Blight Removal, Annexation, Concurrent Jurisdiction, Airport Zoning Board and JLUS. Staff is seeking direction on scheduling a meeting as well as topics the City Commission would like to discuss.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/16/2018

Report No: 13.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Ordinance 1567 for first publication incorporating the New Mexico Uniform Traffic Ordinance into the Alamogordo Code of Ordinances. (*Petria Schreiber, City Attorney*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication

Background: To ease public access to the Uniform Traffic Ordinance and associated fees, the Uniform Traffic Ordinance, as previously adopted will be incorporated directly into the Code of Ordinances.

ORDINANCE NO. 1567

AN ORDINANCE AMENDING CHAPTER 24 TO ESTABLISH THE ALAMOGORDO UNIFORM TRAFFIC ORDINANCE

WHEREAS, The City of Alamogordo adopted Chapter 24 of its Code of Ordinances first in 1991 and have amended and updated it in order to maintain its accuracy with the New Mexico Uniform Traffic Ordinance; and

WHEREAS, the government of the City of Alamogordo wishes to ensure that all citizens have the most effective access to the Uniform Traffic Ordinance as adopted and as such wishes to incorporate the entire Uniform Traffic Ordinance by ordinance;

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Alamogordo that Chapter 24 of the Code of Ordinances of the City of Alamogordo, New Mexico is hereby amended to read as follows:

Chapter 24 – TRAFFIC AND PUBLIC WAYS

24-01. Penalties

24-01-010. - ~~Uniform Traffic Ordinance—Adopted.~~

~~Except as otherwise provided in this chapter the 2010 New Mexico Uniform Traffic Ordinance, a traffic code, with its amendments through 2014 is adopted by reference pursuant to Section 3-17-6, NMSA 1978 (2009 Cum. Supp.).~~

Schedule of penalty assessments.

As used in the New Mexico Uniform Traffic Ordinance adopted by the city, "penalty assessment misdemeanor" means violation of the following listed sections of the New Mexico Uniform Traffic Ordinance, for which the listed penalty assessment is established:

Speeding 24-12-6-1.2:

- (1) Up to and including ten miles an hour over speed limit \$25.00
- (2) From eleven up to and including fifteen miles an hour over speed limit 40.00
- (3) From sixteen up to and including twenty miles an hour over speed limit 70.00
- (4) From twenty-one up to and including twenty-five miles an hour over the speed limit 110.00
- (5) From twenty-six up to and including thirty miles an hour over the speed limit 210.00
- (6) From thirty-one and up to and including thirty-five miles an hour over the speed limit 310.00
- (7) More than thirty-five miles an hour over the speed limit 410.00

Speeding in construction zones 24-12-6-1.2 A. (4):

- (1) Up to and including ten miles an hour over speed limit 46.00
- (2) From eleven up to and including fifteen miles an hour over speed limit 76.00
- (3) From sixteen up to and including twenty miles an hour over speed limit 136.00
- (4) From twenty-one up to and including twenty-five miles an hour over the speed limit 216.00
- (5) From twenty-six up to and including thirty miles an hour over the speed limit 416.00
- (6) More than thirty-one miles over the speed limit 500.00

School zones 24-12-6-2.7:

- (1) Up to and including ten miles an hour over speed limit 50.00
- (2) From eleven up to and including nineteen miles an hour over speed limit 65.00
- (3) From 20 up to and including 30 miles an hour over the speed limit 90.00

Flashing signals 24-12-5-8 35.00

Passing vehicles proceeding in opposite direction 24-12-6-2.2 35.00

Limits on overtaking on the left 24-12-6-2.4 35.00

Further limits on driving left of center 24-12-6-2.5 35.00

When overtaking on right permitted 24-12-6-2.6 35.00

No passing zones (incl. school zones) 24-12-6-2.7 35.00

Driving on divided streets 24-12-6-2.14 35.00

Vehicle entering stop/yield intersection 24-12-6-4.3 35.00

Required position, method of turning 24-12-6-5.1 35.00

Obedience to no U-turn signs 24-12-6-5.4 35.00

Limitations on turning around 24-12-6-5.5 35.00

Starting parked vehicle 24-12-6-5.7 35.00

Stopping/standing parking 24-12-6-6.1 15.00

Parking regulations 24-12-6-6.2 15.00

Parking not to obstruct traffic 24-12-6-6.3 15.00

Standing/parking on one-way streets 24-12-6-6.9 15.00

Standing/parking on divided streets 24-12-6-6.10 15.00

Stopping/standing/parking 24-12-6-6.11 15.00
 Angle parking 24-12-6-6.13 15.00
 Stopping for school buses 24-12-6-7.3 110.00
 Stop when traffic obstructed 24-12-6-7.2 35.00
 Eye protection or windshields 24-12-7-5 25.00
 School crossings 24-12-6-10 35.00
 Driving through safety zone 24-12-6-12.15 35.00
 Driving on sidewalk 24-12-6-12.28,17 35.00
 Unhitched trailer 24-12-6-13.3 10.00
 Child restraints 24-12-6-13.12 35.00
 Seat belts 24-12-6-13.13 35.00
 Pedestrians right-of-way 24-12-6-14.2 35.00
 Crossing at other than crosswalks 24-12-6-14.4 35.00
~~Operation of off highway vehicles~~ Operating Motorcycles on Streets Laned for Traffic 24-12-7-2 35.00
 Carrying articles 24-12-8-6 35.00
 Dimming of lights 24-12-10-1.6 35.00
 Stop lamps 24-12-10-1.9 20.00
 Display current valid registration plate 24-12-10-4 25.00
 Evidence of registration 24-12-10-05 25.00
 Driving on streets laned for traffic 24-12-6-2.12 35.00
 Obedience to traffic control devices 24-12-5-3 35.00
 Open container of alcoholic beverage 24-12-6-13.14 85.00
 Operator to be licensed 24-12-6-12.5 55.00
 Careless driving 24-12-6-12.4 105.00
 Following too closely 24-12-6-2.13 35.00
 Basic rule 24-12-6-1.1 35.00
 Tail lamps required 24-12-10-1.7 20.00

Permitting unauthorized person to drive 24-12-6-12.23 35.00
 Parking in alleys 24-12-6-6.4 10.00
 Parking for certain purposes 24-12-6-6.5 10.00
 Parking adjacent to schools 24-12-6-6.7 10.00
 Prohibited activities while driving 24-12-6-12.18 35.00
 Residential parking 24-01-080 24-13-010..... 10.00
 Stopping/standing/parking 24-12-6-6.1 and 24-12-6-6.11 10.00
 Unattended motor vehicle 24-12-6-12.8 35.00
 Unlawful riding 24-12-6-13.2 35.00
 Vehicle approach/entering intersection 24-12-6-4.1 35.00
 Vehicle to be in safe condition 24-12-10-1.12 35.00
 When lighted lamps are required 24-12-10-1.3 35.00
 Windshield to be unobstructed 24-12-10-1.2 35.00
 Drive on right side of street 24-12-6-2.1 35.00
 Emerging from alleyways/driveways 24-12-6-7.1 35.00
 Headlamps on motor vehicle 24-12-10-1.5 20.00
 Obedience to signs designate one-way streets 24-12-6-2.9 35.00
 Mufflers/prevention of noise 24-12-10-1.10 10.00
 Processions 24-12-6-12.20 35.00
 Limits on backing 24-12-6-12.9 35.00
 Vehicle turning left at intersection 24-12-6-4.2 35.00
 Turning and stopping movements and required signals 24-12-6-5.8 35.00
 Texting while driving 24-12-6-18 - first violation 25.00
 Second or subsequent violation 50.00

The penalty assessments shall be deposited in the city treasury.

~~24-01-020. - Same—Provisions not adopted.~~

Sections 12-6-6.5, 12-6-13.11, 12-8-13 through 12-8-23 and subparagraph A(16) of Section 12-6-6.1, paragraph B of Section 12-6-12.3 and 12-6-17.1—12-6-17.10 of the 2004 New Mexico Uniform Traffic Ordinance are not adopted.

Penalty assessment misdemeanors; additional fees.

In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed a fee to be deposited in the city treasury which is calculated as follows:

- (1) A court automation fee of thirteen dollars (\$13.00); and
- (2) A traffic safety fee of eight dollars (\$8.00) which shall be credited to the traffic safety education and enforcement fund to be established and used exclusively for traffic safety education and enforcement purposes.
- (3) A municipal administration fee of ten dollars (\$10.00);
- (4) All fees established in §24-12-12-1.3;
- (5) These increases shall take place immediately upon the ordinance from which this section derives becoming effective.

24-01-030. - Same—Amendments.

The following amendments to the 2010 New Mexico Uniform Traffic Ordinance are adopted:

- (a) ~~12-1-2.1 Access Aisle.~~ "Access Aisle" means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitations and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping, and after January 1, 2011 the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed (66-1-4.1 NMSA 1978).
- (b) ~~12-6-5.5 Limitations on Turning Around.~~ The driver of any vehicle may turn the vehicle so as to proceed in the opposite direction provided that the movement can be made safely and without interfering with other traffic and further provided that authorized signs disallowing U-turns have not been erected in the area; such turn shall not be made if to do so would violate any other traffic ordinance or statute.
- (c) ~~12-6-12.6 Unlawful Use of License; Driving When Privilege To Do So Has Been Suspended or Revoked~~
 - A.—No person shall:
 - (1) display or cause or permit to be displayed or have in his possession any canceled, revoked or suspended driver's license or permit;
 - (2) lend his driver's license or permit to any other person or knowingly permit the use thereof by another;

- ~~(3) — display or represent as one's own any driver's license or permit not issued to him;~~
- ~~(4) — fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked, or canceled;~~
- ~~(5) — permit any unlawful use of driver's license or permit issued to him; (66-5-37)~~
- ~~(6) — drive a motor vehicle on any public street or highway at a time when his privilege to do so is suspended and who knows or should have known that his license was suspended. Upon conviction, the person shall be punished by imprisonment for not less than four days nor more than ninety days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than five hundred dollars (\$500.00). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court;~~
- ~~(7) — drive a motor vehicle on a highway of this state at a time when the person's privilege to do so is revoked and who knows or should have known that the person's license was revoked is guilty of a misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished, notwithstanding the provisions of Sec. 31-18-13 NMSA 1978, by imprisonment for not less than four days or more than ninety days or by participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than \$500. When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court; and~~
- ~~(8) — notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars (\$300.00) and not more than five hundred dollars (\$500.00) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. (66-5-39.1 NMSA 1978)~~

~~B. — In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted~~

~~person shall bear the cost of immobilizing the motor vehicle. (66-5-39 NMSA 1978)~~

~~(d) — Section 12-8-5(C), which reads as follows:~~

~~(C) — Wherever a usable path for bicycles has been provided adjacent to a street, bicycle riders shall use such path and shall not use the street.~~

~~is hereby deleted. The remaining language of section 12-8-5 (C) shall continue in full force and effect.~~

~~(e) — Section 12-12-1.3 is amended:~~

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

~~(1) — a corrections fee of twenty dollars (20.00);~~

~~(2) — a judicial education fee of three dollars (\$3.00);~~

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

~~(f) — 12-12-3 Conduct of Arresting Officer — Notices by Citation.~~

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

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

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

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

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

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

(g)—*12-12-3.1 Electronic Uniform Traffic Citation.*

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

(h)—*12-12-11 Abstract of Traffic Cases—Report on Convictions.*

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

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

C.—The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required in Subsection B of this

~~Section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.~~

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

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

~~(i) —12-6-18 Texting While Driving.~~

~~A.—A person shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.~~

~~B.—The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a handheld mobile communications device. Unless otherwise provided by law, the handheld mobile communications device used in the violation of the provisions of this section is not subject to search by a law enforcement officer during a traffic stop made pursuant to the provisions of this section.~~

~~C.—As used in this section:~~

~~(1) —" driving " means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but "driving" excludes operating a motor vehicle when the vehicle has pulled over to the side of or off an active roadway and has stopped at a location in which it can remain safely stationary;~~

~~(2) —" handheld mobile communications device " means a wireless communications device that is designed to receive and transmit text or image messages, but "handheld mobile communications device" excludes global positioning or navigation systems, devices that are physically or electronically integrated into a motor vehicle and voice-operated or hands free devices that allow the user to compose, send, or read a text message without the use of a hand expect to activate, deactivate or initiate a feature or function; and~~

~~(3) —" text message " means a digital communication transmitted or intended to be transmitted between communication devices and includes electronic mail, an instant message, a text or image communication and a command or request to an internet site; but "text message" excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.~~

D. — A violation of provisions of this section is punishable by a fine of \$25 for a first violation and \$50 for a second or subsequent violation. Violations of provisions of this section may be included in a local penalty assessment ordinance.

(j) — ~~12-6-12.3 Reckless Driving.~~

A. — Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

B. — Every person convicted of reckless driving shall be punished by imprisonment for not less than five days, or by a fine not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or both.

(k) — ~~12-7-9 Off-Highway Motor Vehicles~~

As used in this Article, the following definitions shall apply:

A. — ~~"Off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:~~

(1) — ~~"all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;~~

(2) — ~~"off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;~~

(3) — ~~"recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:~~

(a) — ~~a steering wheel for steering control;~~

(b) — ~~non-straddle seating;~~

(c) — ~~maximum speed capability greater than thirty-five miles per hour;~~

(d) — ~~gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;~~

(e) — ~~less than eighty inches in overall width, exclusive of accessories;~~

(f) — ~~engine displacement of less than one thousand cubic centimeters; and~~

(g) — ~~identification by means of a seventeen-character vehicle identification number; or~~

(4) — ~~By rule of the New Mexico Department of Game and Fish, any other vehicles that may enter the market and fit the general profile of vehicles operated off the highway for recreational purposes.~~

(l) — ~~12-7-9.2 Operation of off-highway motor vehicles on streets or highways — prohibited areas.~~

~~A.— A person shall not operate an off-highway motor vehicle on any:~~

- ~~(1)— limited access highway or freeway at any time;~~
- ~~(2)— paved street or highway except as provided in Subsections B. or C. of this section;~~
- ~~(3)— walking trails; or~~
- ~~(4)— city parks.~~

~~B.— Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular as possible.~~

~~C.— An off-highway vehicle may be operated on a paved street or highway owned and controlled by the City of Alamogordo if:~~

- ~~(1)— the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;~~
- ~~(2)— the vehicle has brakes, mirrors, and mufflers;~~
- ~~(3)— the operator has a valid driver's license, instruction permit, or provisional license and an off-highway motor vehicle safety permit;~~
- ~~(4)— the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act, Sec. 66-5-201 through 66-5-248, NMSA 1978; and~~
- ~~(5)— the operator of the vehicle is wearing eye protection and a safety helmet that comply with the Off-Highway Motor Vehicle Act.~~

~~D.— Any person operating an off-highway motor vehicle within the city limits shall obey all traffic laws, rules, and regulations, including the speed limit as posted and vehicle equipment requirements under Section 12-7-9.9 of the New Mexico Uniform Traffic Ordinance.~~

Penalty assessment misdemeanors; option; payment.

(a) Unless the alleged violator has been involved in a motor vehicle accident involving injury or death or unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice and an agreement to pay the penalty assessment and penalty assessment fee.

(b) Payment of any penalty assessment and penalty assessment fee must be made by mail to, or in person at, the city finance department within thirty (30) days from the date of arrest.

24-01-040. - ~~Schedule of penalty assessments.~~

~~As used in the New Mexico Uniform Traffic Ordinance adopted by the city, "penalty assessment misdemeanor" means violation of the following listed sections of the New Mexico Uniform Traffic Ordinance, for which the listed penalty assessment is established:~~

~~Speeding 12-6-1.2:~~

- ~~(1) Up to and including ten miles an hour over speed limit \$25.00~~
- ~~(2) From eleven up to and including fifteen miles an hour over speed limit 40.00~~
- ~~(3) From sixteen up to and including twenty miles an hour over speed limit 70.00~~
- ~~(4) From twenty-one up to and including twenty-five miles an hour over the speed limit 110.00~~
- ~~(5) From twenty-six up to and including thirty miles an hour over the speed limit 210.00~~
- ~~(6) From thirty-one and up to and including thirty-five miles an hour over the speed limit 310.00~~
- ~~(7) More than thirty-five miles an hour over the speed limit 410.00~~

~~Speeding in construction zones 12-6-1.2 A. (4):~~

- ~~(1) Up to and including ten miles an hour over speed limit 46.00~~
- ~~(2) From eleven up to and including fifteen miles an hour over speed limit 76.00~~
- ~~(3) From sixteen up to and including twenty miles an hour over speed limit 136.00~~
- ~~(4) From twenty-one up to and including twenty-five miles an hour over the speed limit 216.00~~
- ~~(5) From twenty-six up to and including thirty miles an hour over the speed limit 416.00~~
- ~~(6) More than thirty-one miles over the speed limit 500.00~~

~~School zones 12-6-2.7:~~

- ~~(1) Up to and including ten miles an hour over speed limit 50.00~~
- ~~(2) From eleven up to and including nineteen miles an hour over speed limit 65.00~~
- ~~(3) From 20 up to and including 30 miles an hour over the speed limit 90.00~~

~~Flashing signals 12-5-8 35.00~~

~~Passing vehicles proceeding in opposite direction 12-6-2.2 35.00~~

~~Limits on overtaking on the left 12-6-2.4 35.00~~

~~Further limits on driving left of center 12-6-2.5 35.00~~

~~When overtaking on right permitted 12-6-2.6 35.00~~

~~No passing zones (incl. school zones) 12-6-2.7 35.00~~

Driving on divided streets 12-6-2.14 35.00

Vehicle entering stop/yield intersection 12-6-4.3 35.00

Required position, method of turning 12-6-5.1 35.00

Obedience to no U-turn signs 12-6-5.4 35.00

Limitations on turning around 12-6-5.5 35.00

Starting parked vehicle 12-6-5.7 35.00

Stopping/standing parking 12-6-6.1 15.00

Parking regulations 12-6-6.2 15.00

Parking not to obstruct traffic 12-6-6.3 15.00

Standing/parking on one-way streets 12-6-6.9 15.00

Standing/parking on divided streets 12-6-6.10 15.00

Stopping/standing/parking 12-6-6.11 15.00

Angle parking 12-6-6.13 15.00

Stopping for school buses 12-6-7.3 110.00

Stop when traffic obstructed 12-6-7.2 35.00

Eye protection or windshields 12-7-5 25.00

School crossings 12-6-10 35.00

Driving through safety zone 12-6-12.15 35.00

Driving on sidewalk 12-6-12.28 35.00

Unhitched trailer 12-6-13.3 10.00

Child restraints 12-6-13.12 35.00

Seat belts 12-6-13.13 35.00

Pedestrians right-of-way 12-6-14.2 35.00

Crossing at other than crosswalks 12-6-14.4 35.00

Operation of off-highway vehicles 12-7-2 35.00

Carrying articles 12-8-6 35.00

Dimming of lights 12-10-1.6 35.00

Stop lamps 12-10-1.9 20.00

Display current valid registration plate 12-10-4 25.00

Evidence of registration 12-10-05 25.00

Driving on streets laned for traffic 12-6-2.12 35.00

Obedience to traffic control devices 12-5-3 35.00

Open container of alcoholic beverage 12-6-13.14 85.00

Operator to be licensed 12-6-12.5 55.00

Careless driving 12-6-12.4 105.00

Following too closely 12-6-2.13 35.00

Basic rule 12-6-1.1 35.00

Tail lamps required 12-10-1.7 20.00

Permitting unauthorized person to drive 12-6-12.23 35.00

Parking in alleys 12-6-6.4 10.00

Parking for certain purposes 12-6-6.5 10.00

Parking adjacent to schools 12-6-6.7 10.00

Prohibited activities while driving 12-6-12.18 35.00

Residential parking 24-01-080 10.00

Stopping/standing/parking 12-6-6.1 and 12-6-6.11 10.00

Unattended motor vehicle 12-6-12.8 35.00

Unlawful riding 12-6-13.2 35.00

Vehicle approach/entering intersection 12-6-4.1 35.00

Vehicle to be in safe condition 12-10-1.2 35.00

When lighted lamps are required 12-10-1.3 35.00

Windshield to be unobstructed 12-10-1.2 35.00

Drive on right side of street 12-6-2.1 35.00

Emerging from alleyways/driveways 12-6-7.1 35.00

Headlamps on motor vehicle 12-10-1.5 20.00

~~Obedience to signs designate one-way streets 12-6-2.9 35.00~~

~~Mufflers/prevention of noise 12-10-1.10 10.00~~

~~Processions 12-6-12.20 35.00~~

~~Limits on backing 12-6-12.9 35.00~~

~~Vehicle turning left at intersection 12-6-4.2 35.00~~

~~Turning and stopping movements and required signals 12-6-5.8 35.00~~

~~Texting while driving 12-6-18 -- first violation 25.00~~

~~Second or subsequent violation 50.00~~

~~The penalty assessments shall be deposited in the city treasury.~~

~~Reserved~~

~~24-01-050. - Penalty assessment misdemeanors; additional fees.~~

~~In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed a fee to be deposited in the city treasury which is calculated as follows:~~

~~(1) — A court automation fee of thirteen dollars (\$13.00); and~~

~~(2) — A traffic safety fee of eight dollars (\$8.00) which shall be credited to the traffic safety education and enforcement fund to be established and used exclusively for traffic safety education and enforcement purposes.~~

~~(3) — A municipal administration fee of ten dollars (\$10.00);~~

~~(4) — These increases shall take place immediately upon the ordinance from which this section derives becoming effective.~~

~~24-01-060. - Penalty assessment misdemeanors; option; payment.~~

~~(a) — Unless the alleged violator has been involved in a motor vehicle accident involving injury or death or unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice and an agreement to pay the penalty assessment and penalty assessment fee.~~

~~(b) — Payment of any penalty assessment and penalty assessment fee must be made by mail to, or in person at, the city finance department within thirty (30) days from the date of arrest.~~

~~Reserved~~

~~24-01-070. - Definitions.~~

~~The definitions in the remaining provisions of this chapter shall be those of the Uniform Traffic Ordinance as currently adopted, unless a different definition is specified.~~

Reserved

24-01-080. - Residential parking restricted.

- (a) ~~Except when necessary to avoid conflict with other traffic, or in compliance with this section or the directions of a police officer or official traffic control device, no person shall stop, stand or park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers, at any place where an official sign reads "Residential Parking Only," and along the curb within ten feet of either side of such sign, unless given permission by the resident living directly behind the sign. Except upon the conditions listed in this section, it shall be unlawful to place a vehicle, occupied or not, along the curb within ten feet of a "Designated Mobility Disabled Resident Parking Only" sign unless the vehicle has the requisite handicapped placard and the resident living directly behind the sign has given permission for the vehicle to occupy the space. A citation for violation of this section shall be written only upon complaint of such resident.~~
- (b) ~~The determination to post a residence with "Residential Parking Only" signs shall be made by the city commission, after good cause is shown by the applicant. Good cause must include the reasons why the applicant's residence contains inadequate parking to meet the needs of the applicant. No residence may be posted which is not within five hundred (500) feet of the property line of a public meeting place.~~
- (c) ~~A fee of one hundred dollars (\$100.00) shall be paid to the city treasurer upon approval of each application.~~
- (d) ~~The determination to post a residence with "Designated Mobility Disabled Resident Parking Only" signs shall be made administratively by a designee of the city manager, after good cause is shown by the applicant. Good cause must include the reasons why the applicant's residence contains inadequate parking to meet the needs of the applicant.~~
- (e) ~~At the first meeting in January each year, city manager shall prepare a list of the locations of all "Residential Parking Only" signs and all "Designated Mobility Disability Resident Parking Only" signs in the city. The city manager shall recommend continuance or discontinuance of each location; if discontinuance is recommended, the resident(s) shall be notified by first class mail not less than seven (7) days before the meeting. The commission shall direct the discontinuance and removal of signs at any location deemed advisable.~~
- (f) ~~The city manager shall have the authority to direct the removal of "Residential Parking Only" or "Designated Mobility Disabled Resident Parking Only" signs at any location not identified on the list of such signs approved by the city commission.~~
- (g) ~~Existing signs with wording approved under previous versions of this section remain effective and enforceable, but shall not be replaced except with signs containing the currently approved wording.~~

Reserved

24-01-085. - Parking at businesses for persons with mobility disabilities.

- (a) ~~The determination to post the curb area adjacent to a business with "Parking Designated for Persons with Mobility Disability" signs shall be made by the city commission, after good~~

~~cause is shown by the applicant. Good cause must include a statement that the applicant's business does not have off-street parking available or an off-street parking space that could be used for parking for persons with mobility disabilities.~~

- ~~(b) The application will be accompanied by an application fee of fifty dollars (\$50.00) to defray the costs of investigating the application and giving notice in accordance with this ordinance.~~
- ~~(c) In determining whether or not to authorize a sign in accordance with this section, the commission will consider the likelihood that the parking space will serve more than one person and whether the need of the business for the space is likely to be on-going.~~
- ~~(d) Before an application to post a sign according to this section can be considered by the city commission, the planning division will give notice of the application to all property owners within a 200-foot radius of the requesting business at least ten days prior to the meeting.~~
- ~~(e) A fee of one hundred dollars (\$100.00) for the sign shall be paid to the city treasurer upon approval of each application.~~
- ~~(f) The city commission will review signs placed in connection with this ordinance at the same time and in the same manner with which it reviews signs placed in accordance with section 24-01-080.~~

Reserved

24-01-090. ~~-Additional parking restrictions.~~

- ~~(a) No person shall park a vehicle on a street that has been posted with No Parking signs.~~
- ~~(b) No vehicle shall be parked within three (3) feet behind a curb adjacent to a street.~~
- ~~(c) No person shall park a truck tractor, road tractor, or combination of any such tractor and trailer or semitrailer, on a street in a residence district except when necessary for loading or unloading of property. In any event, parking of any such vehicle shall not obstruct traffic to any greater degree than is strictly necessary.~~
- ~~(d) No person shall park any vehicle in an area that is designated as a fire lane by a posted sign or by a curb painted red.~~

Reserved

24-01-100. - Reserved.

Editor's note— Ord. No. 1213, § 10, adopted August 24, 2004, amended the Code by repealing former § 24-01-100 in its entirety. Former § 24-01-100 pertained to open containers of alcoholic beverages; and derived from Ord. No. 668, adopted November 22, 1983.

24-01-110. ~~—Jogging, etc., at night.~~

~~Every person who jogs or runs in any roadway at night shall wear or carry reflective clothing, tape or equipment, or lights, or a combination thereof, so that he or she is visible from a~~

~~distance of five hundred (500) feet, from any angle, when illuminated by the low beam headlights of an automobile.~~

Reserved

~~24-01-120. – Use of public ways.~~

~~The public streets, sidewalks and adjoining rights-of-ways are for the purposes of vehicular, pedestrian and similar traffic, for parking, and for open space appropriate to adjoining land uses.~~

Reserved

24-01-130. - Reserved.

Editor's note— Ord. No. 1213, § 12, adopted August 24, 2004, amended the Code by repealing former § 24-01-130 in its entirety. Former § 24-01-130 pertained to fines in construction zones; and derived from Ord. No. 1143, adopted April 9, 2002.

24-02 through 24-11. – Reserved

24-12. Uniform Traffic Ordinance

ARTICLE ONE

24-12-1-1. – Definition of Words and Phrases.

A. The following words and phrases when used in this ordinance shall, for the purpose of this ordinance, have the meanings respectively ascribed to them in Sections 12-1-1 through 12-1-89. (*)

B. When in a specific section of this ordinance a different meaning is given for a term defined for general purposes in this section, the specific section's meaning and application of the term shall control. (66-1-4 NMSA 1978)

24-12-1-2. - ABANDONED VEHICLE.

"Abandoned Vehicle" means a vehicle or motor vehicle which has been determined by a New Mexico law enforcement agency:

(1) to have been left unattended on either public or private property for at least thirty days;

(2) not to have been reported stolen;

(3) not to have been claimed by any person asserting ownership; and

(4) not to have shown by normal record checking procedures to be owned by any person. (66-1-4.1 NMSA 1978)

24-12-1-2.1. - ACCESS AISLE.

“Access Aisle” means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitations and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping, and after January 1, 2011 the words “NO PARKING” in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle’s rear tires would be placed (66-1-4.1 NMSA 1978).

24-12-1-3. - ADMINISTRATOR.

"Administrator" means the chief executive employee of the municipality; including but not limited to the manager, clerk or administrator, or his designated representative. (*)

24-12-1-4. - ALLEY.

"Alley" means a street intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic. (*)

24-12-1-5. - AUTHORIZED EMERGENCY VEHICLE.

"Authorized Emergency Vehicle" means any vehicle of the fire department, police vehicles, ambulances and such emergency vehicles of municipal departments or public service corporations as are designated or authorized by the chief of the New Mexico state police or the administrator. (66-1-4.1 NMSA 1978)

24-12-1-5.1. - AUTOCYCLE.

“Autocycle” means a three-wheeled motorcycle on which the driver and all passengers ride in a completely or partially enclosed, seating area and is manufactured to comply with all applicable federal standards, regulations and laws and is equipped with:

- (1) non-straddle seating;
- (2) rollover protection;
- (3) safety belts for all occupants;
- (4) antilock brakes;
- (5) a steering wheel; and
- (6) pedals. (66-1-4.1 NMSA 1978)

24-12-1-6. - BICYCLE.

"Bicycle" means every device propelled by human power, upon which any person may ride, having two tandem wheels, except scooters and similar devices. (66-1-4.2 NMSA 1978)

24-12-1-7. - BUS.

"Bus" means every motor vehicle designed and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (66-1-4.2 NMSA 1978)

24-12-1-8. - BUSINESS DISTRICT.

"Business District" means the territory contiguous to and including a street and within three hundred feet from the street where there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least fifty percent of the frontage on one side or fifty percent of the frontage collectively on both sides of the street. (66-1-4.2 NMSA 1978)

24-12-1-9. - CANCELLATION.

"Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation. (66-1-4.3 NMSA 1978)

24-12-1-10 COMBINATION.

"Combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers, or semitrailers converted to trailers by means of a converter gear. (66-1-4.3 NMSA 1978)

24-12-1-10.1. - COMMERCIAL MOTOR VEHICLE.

"Commercial motor vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle: is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of twenty-six thousand one or more pounds; (66-1-4.3 J NMSA 1978)

24-12-1-11. - CONTROLLED ACCESS STREET.

"Controlled Access Street" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over the highway, street or roadway. (66-1-4.3 NMSA 1978)

24-12-1-12. - CONVERTER GEAR.

"Converter Gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in a combination to support the front end of a semitrailer but not permanently attached thereto. A converter gear shall not be considered a vehicle, as that term is used in Chapter 66 NMSA 1978, but weight attributable thereto shall be included in declared gross weight. (66-1-4.3 NMSA 1978)

24-12-1-13. - CROSSWALK. "Crosswalk" means:

- A. That part of a street at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.
- B. Any portion of a street at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (66-1-4.3 NMSA 1978)

24-12-1-14. - CURB LOADING ZONE.

"Curb Loading Zone" means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials. (*)

24-12-1-15. - DAYTIME.

"Daytime" means from a half hour before sunrise to a half hour after sunset. (*)

24-12-1-16. - DEALER.

"Dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles, house trailers or trailers subject to registration in this state. Dealer shall not include:

- A. receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;
- B. public officers while performing their duties as such officers;
- C. persons making casual sales of their own vehicles duly registered and licensed to them by the state of New Mexico;

D. finance companies, banks and other lending institutions covering sales of repossessed vehicles; or

E. licensed brokers under the Manufactured Housing Act who for a fee, commission or valuable consideration engage in brokerage activities related to the sale, exchange or lease-purchase of pre-owned manufactured homes on a site installed for a consumer. (66-1-4.4 NMSA 1978)

24-12-1-17. - DIRECTOR.

"Director" means the secretary of the state taxation and revenue department. (66-1-4.4 NMSA 1978)

24-12-1-18. - DIVIDED STREET.

"Divided Street" means any street containing a physical barrier, intervening space or clearly indicated dividing section so construed to impede vehicular traffic and separating vehicular traffic traveling in opposite directions. (*)

24-12-1-19. - DIVISION.

"Division" without further specification, "division of motor vehicles" or motor vehicle division means the department. (66-1-4.4 NMSA 1978)

24-12-1-20. – DRIVEAWAY/TOWAWAY OPERATION.

"Driveaway/Towaway Operation" means any operation in which any motor vehicle, new or used, constitutes the commodity being transported, when one set or more of wheels of any such motor vehicle is on the street during the course of transportation, whether or not the motor vehicle furnishes the motive power. (66-1-4.4 NMSA 1978)

24-12-1-21. DRIVER.

"Driver" means every person who drives or is in actual physical control of a motor vehicle, including a motor-driven cycle, upon a street or who is exercising control over, or steering, a vehicle being towed by a motor vehicle or who operates or is in actual physical control of an off-highway motor vehicle. (66-1-4.4 K NMSA 1978)

24-12-1-22. - DRIVER'S LICENSE.

"Driver's License" means a license or a class of license issued by a State or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle. (66-1-4.4 NMSA 1978)

24-12-1-23. - EXPLOSIVES.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. A further definition of explosives is contained in Section 66-3-861 NMSA 1978. (66-1-4.5 NMSA 1978)

24-12-1-24. - FARM TRACTOR.

"Farm Tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows and mowing machines and other implements of husbandry. (66-1-4.6 NMSA 1978)

24-12-1-25. - FIRST OFFENDER.

"First Offender" means a person who for the first time under state or federal law or municipal ordinance has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which renders him incapable of safely driving a motor vehicle regardless of whether the person's sentence was suspended or deferred. (66-1-4.6 NMSA 1978)

24-12-1-26. - FLAMMABLE LIQUID.

"Flammable Liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-up test device. (66-1-4.6 NMSA 1978)

24-12-1-27. - FREIGHT CURB LOADING ZONE.

"Freight Curb Loading Zone" means a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight. (*)

24-12-1-28. - HOUSE TRAILER.

"House Trailer" means a manufactured home. (66-1-4.8 NMSA 1978)

24-12-1-29. - IMPLEMENT OF HUSBANDRY.

"Implement of Husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations. (66-1-4.9 NMSA 1978)

24-12-1-30 INTERSECTION.

A. "Intersection" means:

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways or two streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.

(2) Where a street includes two roadways thirty feet or more apart, every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event the intersecting street also includes two roadways thirty feet or more apart, every crossing of two roadways of such highways shall be regarded as a separate intersection. (66-1-4.9 NMSA 1978)

B. The junction of an alley with a roadway shall not constitute an intersection. (*)

24-12-1-31. - INTERSTATE HIGHWAY.

"Interstate Highway" means any public highway which has been designated as an interstate highway by the government of the United States. (*)

24-12-1-32. - LANED ROADWAY.

"Laned Roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic. (66-1-4.10 NMSA 1978)

24-12-1-33. - LICENSE OR LICENSE TO OPERATE A MOTOR VEHICLE.

"License or License to Operate a Motor Vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state including:

(1) any temporary license or instruction permit;

(2) the privilege of any person to drive a motor vehicle whether or not the person holds a valid license; and

(3) any nonresident's operating privilege as defined herein. (*)

24-12-1-34. - METAL TIRE.

"Metal Tire" means every tire the surface of which in contact with the street is wholly or partly of metal or other hard nonresilient material, except that for the purposes of this ordinance a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire. (66-1-4.11 NMSA 1978)

24-12-1-35. - MOBILE HOME.

"Mobile Home" means a house trailer, other than one held as inventory for sale or resale, that exceeds either a width of eight feet or a length of forty feet, when equipped for the road. (*)

24-12-1-36. - MOPED.

"Moped" means a two-wheeled or three-wheeled vehicle with an automatic transmission and a motor having a piston displacement of less than fifty cubic centimeters, which is capable of propelling the vehicle at a maximum speed of not more than thirty miles an hour on level ground at sea level. (66-1-4.11 NMSA 1978)

24-12-1-37. - MOTORCYCLES.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including autocycles and excluding a tractor. (66-1-4.11 NMSA 1978)

24-12-1-38. - MOTOR DRIVEN CYCLE.

"Motor Driven Cycle" means every motorcycle, motor scooter and moped having an engine with less than one hundred cubic centimeters displacement. (*)

24-12-1-39 MOTOR SCOOTER.

"Motor Scooter" means a motor-driven cycle as defined in this section. (*)

24-12-1-40. - MOTOR VEHICLE.

"Motor Vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails; but for the purposes of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978], "motor vehicle" does not include "special mobile equipment." (66-1-4.11 NMSA 1978)

24-12-1-41. - NIGHTTIME.

"Nighttime" means the hours from a half hour after sunset to a half hour before sunrise. (*)

24-12-1-42. - NONRESIDENT.

"Nonresident" means every person who is not a resident of this state. (66-1-4.12 NMSA 1978)

24-12-1-43. - OFFICIAL TIME STANDARD.

"Official Time Standard" means whenever certain hours are named in this ordinance they shall mean standard time or daylight-saving time as may be in current use in this municipality. (*)

24-12-1-44. - OFFICIAL TRAFFIC-CONTROL DEVICES.

"Official Traffic-Control Devices" means all signs, signals, markings and devices not inconsistent with this ordinance placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. (66-1-14.13 NMSA 1978)

24-12-1-45. - OPERATOR.

"Operator" means driver, as defined in Section 12-1-21. (66-1-4.13 NMSA 1978)

24-12-1-46. - OWNER.

"Owner" means a person who holds the legal title of a vehicle and may include a conservator, guardian, personal representative, executor or similar fiduciary or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or, in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor. (66-1-4.13 NMSA 1978)

24-12-1-47. - PARK OR PARKING.

"Park or Parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading. (66-1-4.14 NMSA 1978)

24-12-1-48. - PASSENGER CURB LOADING ZONE.

"Passenger Curb Loading Zone" means a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers. (*)

24-12-1-49. - PEDESTRIAN.

"Pedestrian" means any natural person on foot. (66-1-4.14 NMSA)

24-12-1-50. - PERSON.

"Person" means every natural person, firm, copartnership, association, corporation, or other legal entity. (66-1-4.14 NMSA 1978)

24-12-1-51. - POLE TRAILER.

"Pole Trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise

secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections. (66-1-4.14 NMSA 1978)

24-12-1-52. - POLICE OR PEACE OFFICER.

"Police or Peace Officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of this ordinance. (66-1-4.14 NMSA 1978)

24-12-1-53. - PRIVATE ROAD OR DRIVEWAY.

"Private Road or Driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons. (66-1-4.14 NMSA 1978)

24-12-1-54. - PUBLIC HOLIDAYS.

"Public Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or any other day designated a holiday by the governing body of this municipality. (*)

24-12-1-55. - RAILROAD.

"Railroad" means a carrier of persons or property upon cars operated upon stationary rails. (66-1-4.15 NMSA 1978)

24-12-1-56. - RAILROAD SIGN OR SIGNAL.

"Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. (66-1-4.15 NMSA 1978)

24-12-1-57. - RAILROAD TRAIN.

"Railroad Train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails. (66-1-4.15 NMSA 1978)

24-12-1-58. - RECREATIONAL VEHICLE.

"Recreational Vehicle" means a vehicle with a camping body that has its own motive power, is affixed to or is drawn by another vehicle and includes motor homes, travel trailers and truck campers. (66-1-4.15 NMSA 1978)

24-12-1-59. - REGISTRATION NUMBER.

"Registration Number" means the number assigned by the motor vehicle division to the owner of a vehicle or motor vehicle required to be registered by the Motor Vehicle Code. (66-1-4.15 NMSA 1978)

24-12-1-60. - REGISTRATION PLATE.

"Registration Plate" means the plate, marker, sticker or tag assigned by the motor vehicle division for the identification of the registered vehicle. (66-1-4.15 NMSA 1978)

24-12-1-61. - RESIDENCE DISTRICT.

"Residence District" means the territory contiguous to and including a street not comprising a business district when the property on the street for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business. (66-1-4.15 NMSA 1978)

24-12-1-62. - REVOCATION.

"Revocation" means that the driver's license and privilege to drive a motor vehicle on the public streets are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation. (66-1-4.15 NMSA 1978)

24-12-1-63. - RIGHT OF WAY.

"Right of Way" means the privilege of the immediate use of the roadway. (66-1-4.15 NMSA 1978)

24-12-1-64. - ROAD TRACTOR.

"Road Tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn. (66-1-4.15 NMSA 1978)

24-12-1-65. - ROADWAY.

"Roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street includes two or more separate roadways, the term "roadway" as used in this ordinance refers to any such roadway separately but not to all such roadways collectively. (66-1-4.15 NMSA 1978)

24-12-1-66. - SAFETY ZONE.

"Safety Zone" means the area or space officially set apart within a street for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. (66-1-4.16 NMSA 1978)

24-12-1-67. - SCHOOL BUS.

"School Bus" means any motor vehicle operating under the jurisdiction of the state board of education or private school or parochial school interests which is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

- (1) operated by a common carrier, subject to and meeting all requirements of the state corporation commission but not used exclusively for the transportation of students;
- (2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the state corporation commission but is not used exclusively for transportation of students; or
- (3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978; or
- (4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978. (66-1-4.16 NMSA 1978)

24-12-1-68. - SEMITRAILER.

"Semitrailer" means any vehicle, without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. (66-1-4.16 NMSA 1978)

24-12-1-69. - SIDEWALK.

"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians. (66-1-4.16 NMSA 1978)

24-12-1-70. - SOLID TIRE.

"Solid Tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load. (66-1-4.16 NMSA 1978)

24-12-1-71. - STAND OR STANDING.

"Stand or Standing" means the halting of vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers. (*)

24-12-1-72. - STATE.

"State" means a state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. (66-1-4.16 NMSA 1978)

24-12-1-73. - STATE HIGHWAY.

"State Highway" means any public highway which has been designated as a state highway by the legislature, the state transportation commission or the secretary of the state transportation department. (66-1-4.16 NMSA 1978)

24-12-1-74. - STOP.

"Stop", when required, means complete cessation from movement. (66-1-4.16 NMSA 1978)

24-12-1-75. - STOP, STOPPING OR STANDING.

"Stop, Stopping or Standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal. (66-1-4.16 NMSA 1978)

24-12-1-76. - STREET OR HIGHWAY.

"Street or Highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction. (66-1-4.16 NMSA 1978)

24-12-1-77. - SUBSEQUENT OFFENDER.

"Subsequent Offender" means a person who was previously a first offender and who again, under state law, federal law, or municipal ordinance, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which rendered the person incapable of safely driving a motor vehicle regardless of whether the person's sentence is suspended or deferred. (66-1-4.16 NMSA 1978)

24-12-1-78. - SUSPENSION.

"Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn. (66-1-4.16 NMSA 1978)

24-12-1-79. - TAXICAB.

"Taxicab" means a motor vehicle used in the transportation of persons for hire, having a normal seating capacity of not more than seven persons. (66-1-4.17 NMSA 1978)

24-12-1-80. - THROUGH STREET.

"Through Street" means every street or portion thereof at the entrance to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing the same when stop signs are erected as provided in this ordinance. (66-1-4.17 NMSA 1978)

24-12-1-81. - TRAFFIC.

"Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together using any street for purposes of travel. (66-1-4.17 NMSA 1978)

24-12-1-82. - TRAFFIC-CONTROL SIGNAL.

"Traffic-Control Signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed. (66-1-4.17 NMSA 1978)

24-12-1-83. - TRAILER.

"Trailer" means any vehicle, without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no part of its weight rests upon the towing vehicle. (66-1-4.17 NMSA 1978)

24-12-1-84. - TRIAL COURT.

"Trial Court" means the magistrate, municipal or district court which tries the case concerning an alleged violation of a provision of the Uniform Traffic Ordinance and the Motor Vehicle Code. (66-1-4.17 NMSA 1978)

24-12-1-84.1. - TRIBE.

"Tribe" means an Indian nation, tribe or pueblo that is located wholly or partially in New Mexico. For purposes of violations resulting in suspension or revocation of licenses and for DWI offenses (66-5-25, 26, 30 and 66-8-102), "tribe" is further defined as one that has executed an intergovernmental agreement with the state pursuant to Section 66-5-27.1 NMSA 1978. (66-1-4.17 and 66-5-1.2 NMSA 1978) (*)

24-12-1-85. - TRUCK.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property. (66-1-4.17 NMSA 1978)

24-12-1-86. - TRUCK TRACTOR.

"Truck Tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. (66-1-4.17 NMSA 1978)

24-12-1-87. - VALIDATING STICKER.

"Validating Sticker" means the tab or sticker issued by the division to signify, upon a registration plate, renewed registration. (66-1-4.19 NMSA 1978)

24-12-1-88. - VEHICLE.

"Vehicle" means every device in, upon, or by which, any person or property is or may be transported or drawn upon a street, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks. (66-1-4.19 NMSA 1978)

24-12-1-89. - ANY OTHER TERM.

"Any Other Term" used in this ordinance is used in its commonly accepted meaning except where such term has been defined elsewhere in this ordinance or defined in Sections 66-1-4.1 through 66-1-4.21 NMSA 1978. (*)

ARTICLE TWO

24-12-2-1. - TRAFFIC DIVISION ESTABLISHED.

A traffic division within the municipal police department is established. (*)

24-12-2-2. - ADMINISTRATION OF TRAFFIC DIVISION.

The traffic division shall be under the control of an officer of the police department, and this officer shall be appointed by and directly responsible to the chief of police or a person designated by the chief of police. (*)

24-12-2-3. - DUTIES OF TRAFFIC DIVISION.

The traffic division, with such assistance as may be rendered by the other divisions within the police department, shall:

- (1) enforce traffic regulations applicable to street traffic;
- (2) make arrests for traffic violations;
- (3) investigate accidents;
- (4) cooperate with the traffic engineer and other city officials in the administration of traffic conditions; and
- (5) carry out those duties imposed on it by this ordinance. (*)

24-12-2-4. - RECORDS OF TRAFFIC DIVISION.

- A. The traffic division or the police department shall keep a record of traffic accidents, warnings, arrests, convictions, complaints and alleged violations of this ordinance or state vehicle laws reported for each person within its jurisdiction.
- B. The records shall be filed alphabetically under the name of the person concerned.
- C. Each person's record shall:
 - (1) include a record of the final disposition of all alleged violations of this ordinance or state vehicle laws;
 - (2) show all types of violations and the total of each type; and
 - (3) accumulate during at least a five-year period and shall be maintained complete for at least the most recent five-year period. (*)

24-12-2-5. - TRAFFIC ACCIDENT REPORTS MAINTAINED BY TRAFFIC DIVISION.

- A. The traffic division shall maintain a suitable system of filing traffic accident reports.
- B. Accident reports or cards referring to them shall be filed alphabetically by location. (*).
- C. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this ordinance either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the division.
- D. The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars

(\$500) or more shall within five days after the accident forward a written report of the accident to the division. (66-7-207 NMSA 1978)

24-12-2-6. - TRAFFIC ACCIDENT STUDIES BY TRAFFIC DIVISION.

Whenever accidents at particular location become numerous, the traffic division shall cooperate with the traffic engineer in conducting studies of such accidents and determining remedial measures. (*)

24-12-2-7. - ANNUAL TRAFFIC SAFETY REPORT BY TRAFFIC DIVISION.

The traffic division shall prepare an annual traffic report which shall be filed with the administrator. The report shall contain, but not be limited to, the following information:

- (1) number of traffic accidents, number of persons killed, number of persons injured and other pertinent traffic accident data;
- (2) safety activities of the police; and
- (3) plans and recommendations of the traffic division for future traffic safety activities. (*)

24-12-2-8. - TRAFFIC ENGINEER AND TRAFFIC ENGINEERING DEPARTMENT ESTABLISHED.

The traffic engineering department is established. The department shall be under the control of the traffic engineer who shall be appointed by the administrator and who shall exercise the powers and duties provided in this ordinance. (*)

24-12-2-9. - DUTIES OF TRAFFIC ENGINEER.

The traffic engineer shall:

- (1) determine the installation and proper timing and maintenance of traffic control devices;
- (2) conduct engineering analyses of traffic accidents and devise remedial measures;
- (3) conduct engineering investigations of traffic conditions;
- (4) cooperate with other officials in the development of methods to improve traffic conditions; and

(5) carry out such additional powers and duties as are imposed by municipal ordinances. (*)

24-12-2-10. - EMERGENCY AND EXPERIMENTAL REGULATIONS.

A. The administrator may make and enforce temporary or experimental regulations to cover emergencies or special conditions, but no such temporary or experimental regulation shall remain in effect for more than 90 days.

B. The administrator may test traffic-control devices under actual traffic conditions.
(*)

ARTICLE THREE

24-12-3-1. - OBEDIENCE TO TRAFFIC ORDINANCE.

It is unlawful and, unless otherwise declared in this ordinance with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this ordinance. (66-7-3 NMSA 1978)

24-12-3-2. - OBEDIENCE TO OFFICERS.

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or fire department officer invested by this ordinance with authority to direct, control, or regulate traffic. (66-7-4 NMSA 1978)

24-12-3-3. - AUTHORITY OF POLICE AND FIRE DEPARTMENTS.

A. It is the duty of police officers, or such officers as may be assigned by the chief of police, to enforce all traffic regulations of this municipality and all applicable state vehicle laws.

B. Police officers, or such officers as may be assigned by the chief of police, are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws and regulations. However, in the event of a fire or other emergency, they may direct as conditions require, notwithstanding provisions of the traffic laws and regulations, in order to expedite traffic or to safeguard pedestrians.

C. Officers of the fire department may direct or assist police in directing traffic at the scene of a fire or in its immediate vicinity. (*)

24-12-3-4. - AUTHORIZED EMERGENCY VEHICLE.

A. The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to

but not upon returning from a fire alarm, may exercise the privileges set forth in this section subject to the conditions stated. The chief of the New Mexico state police or the appropriate local agency may designate emergency vehicles and revoke the designation. When vehicles are so designated, they are authorized emergency vehicles.

B. The driver of an authorized emergency vehicle may:

- (1) park or stand, irrespective of the provisions of this ordinance;
- (2) proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation;
- (3) exceed the maximum speed limits so long as he does not endanger life or property; and
- (4) disregard regulations governing direction of movement or turning in specified directions.

C. The exemptions granted to an authorized emergency vehicle apply only when the driver of the vehicle, while in motion sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor does it protect the driver from the consequences of his reckless disregard for the safety of others. (66-7-6 NMSA 1978)

24-12-3-5. - APPLICATION OF TRAFFIC ORDINANCE TO PERSONS PROPELLING PUSH CARTS, RIDING ANIMALS OR DRIVING ANIMAL-DRAWN VEHICLES.

Every person riding an animal, driving any animal-drawn vehicle, or propelling a push cart upon a street shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this ordinance, except those provisions of this ordinance which by their very nature can have no application, and except where otherwise specifically provided in this ordinance. (66-7-7 NMSA 1978)

24-12-3-6. - USE OF COASTER WAGONS, ROLLER SKATES, SKATEBOARDS, AND SIMILAR DEVICES RESTRICTED.

No person upon roller skates, or riding in or by means of any coaster wagon, skateboard, toy vehicle, or similar device, shall go upon any street except while crossing a street on a crosswalk

and when so crossing, the person shall be granted all of the rights and be subject to all of the duties applicable to pedestrians as provided for in this ordinance. (*)

24-12-3-7. - PUBLIC OFFICERS AND EMPLOYEES TO OBEY ORDINANCE-- EXCEPTIONS.

A. The provisions of this ordinance, applicable to the drivers of vehicles upon the streets, shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this ordinance, with reference to authorized emergency vehicles.

B. Unless specifically made applicable, the provisions of this ordinance shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work. (66-7-5 NMSA 1978)

ARTICLE FOUR

24-12-4-1. - ACCIDENTS INVOLVING DEATH OR PERSONAL INJURY.

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then immediately return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 12-4-3. Every such stop shall be made without obstructing traffic more than is necessary.

B. Any person failing to stop or comply with the requirements of Section 12-4-3, where the accident does not result in great bodily harm or death, shall be sentenced to a definite term of not more than ninety days in jail, or a fine of not more than three hundred dollars (\$300), or both. (66-7-201 NMSA 1978)

24-12-4-2. - ACCIDENTS INVOLVING DAMAGE TO VEHICLE.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 12-4-3. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor. (66-7-202 NMSA 1978)

24-12-4-3. - DUTY TO GIVE INFORMATION AND RENDER AID.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. (66-7-203 NMSA 1978)

24-12-4-4. - DUTY UPON STRIKING UNATTENDED VEHICLE.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. (66-7-204 NMSA 1978)

24-12-4-5. - DUTY UPON STRIKING FIXTURES OR OTHER PROPERTY UPON A STREET.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a street shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request exhibit his driver's license and shall make report of such accident when and as required in Section 12-4-7. (66-7-205 NMSA 1978)

24-12-4-6. - IMMEDIATE NOTICE OF ACCIDENTS.

A. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of five hundred dollars (\$500) or more, shall immediately, by the quickest means of communication, give notice of such accident to the police department if the accident occurs within a municipality; otherwise to the office of the county sheriff or the nearest office of the New Mexico state police. (66-7-206 NMSA 1978)

B. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in subsection A and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall give or cause to be given the notice not given by the driver. (66-7-208)

24-12-4-7. - WRITTEN REPORTS OF ACCIDENTS.

A. The driver of a vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of five hundred dollars (\$500) or more shall, within five days after such accident, forward a written report of such accident to the police department and state department of transportation. (66-7-207 NMSA 1978)

B. The provisions of this section shall not be applicable when the accident has been investigated at the scene by a police officer while the driver was present.

C. The provisions of this section may be met by submission to the police department of a copy of any accident report required under state law. (*)

D. Whenever the driver is physically incapable of making a written report of an accident as required in this ordinance and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within five days after learning of the accident make such report not made by the driver. (66-7-208 NMSA 1978)

E. The police department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports concerning the accident to the department.

F. Every police officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the police department and state department of transportation. (66-7-207 NMSA 1978)

24-12-4-8. - GARAGES, DEALERS AND WRECKERS OF VEHICLES TO REPORT.

The person in charge of any garage or repair shop, dealers, or wreckers of vehicles, to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in this ordinance, or struck by any bullet, shall report to the police department within twenty-four hours after such motor vehicle is received, giving such vehicle identification number, registration number, and the name and address of the owner or operator of such vehicle. (66-7-212 NMSA 1978)

24-12-4-9. - FALSE REPORTS.

No person shall give information to the police department in oral or written reports of accidents, knowing or having reason to believe that the information is false. (*)

24-12-4-10. - WRITTEN ACCIDENT REPORTS CONFIDENTIAL--EXCEPTIONS.

A. All accident reports made by persons involved in accidents or by persons in charge of garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the police department and state department of transportation or state agencies having use for the records for accident prevention purposes or for the administration of the laws of this state relating to the deposits of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the police department and state department of transportation may disclose:

- (1) the identity of a person involved in an accident when his identity is not otherwise known or when the person denies his presence at the accident; or
- (2) the fact that the owner or operator of a motor vehicle involved in the accident is or is not insured and if he is insured, the name and address of his insurance carrier.

B. Except as otherwise provided in this section, no accident report shall be used as evidence in any trial, civil or criminal, arising out of an accident.

C. The police department and state department of transportation shall furnish upon demand of any person who has or claims to have made a report or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the police department and state department of transportation solely to prove a compliance or a failure to comply with the requirement that a report be made to the police department.

D. A certified copy of the investigating officer's accident report may be introduced into evidence in any arbitration or civil action involving the insurer's liability under a motor vehicle or automobile liability policy containing uninsured motorist coverage as required by Section 66-5-301 NMSA 1978 to prove that the owner or operator of the other motor vehicle involved in the accident is either insured or uninsured. The police department and investigating agency shall furnish a certified copy of the investigating officer's accident report to either party to the arbitration or civil action or to the court on request. The certified copy of the investigating officer's report is prima facie evidence that the owner or operator of the other motor vehicle is either insured or uninsured. (66-7-213 NMSA 1978)

ARTICLE FIVE

24-12-5-1. - AUTHORITY TO INSTALL TRAFFIC-CONTROL DEVICES.

The administrator shall place and maintain such traffic-control devices as necessary to carry out the provisions of this ordinance and to regulate, warn or guide traffic. (*)

24-12-5-2. - MANUAL AND SPECIFICATIONS FOR TRAFFIC-CONTROL DEVICES.

The administrator shall place and maintain such traffic-control devices upon streets under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this ordinance or to regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications. (66-7-103 NMSA 1978)

24-12-5-3. - OBEDIENCE TO REQUIRED TRAFFIC-CONTROL DEVICES.

The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this ordinance, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this ordinance. (66-7-104 NMSA 1978)

24-12-5-4. - WHEN OFFICIAL TRAFFIC-CONTROL DEVICES REQUIRED FOR ENFORCEMENT PURPOSES.

No provision of this ordinance for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place. (66-7-104 NMSA 1978)

24-12-5-5. - OFFICIAL TRAFFIC-CONTROL DEVICES--PRESUMPTION OF LEGALITY.

A. Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this ordinance, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

B. Any official traffic-control device placed pursuant to the provisions of this ordinance and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this ordinance, unless the contrary shall be established by competent evidence. (*)

24-12-5-6. - LIGHTS AND THEIR APPLICATION TO VEHICLES AND PEDESTRIANS.

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one (1) at a time or in combination, only the colors green,

yellow and red shall be used, except for special pedestrian control signals carrying a word legend, and the lights indicate and apply to drivers of vehicles and pedestrians:

A. Green alone:

(1) vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at the place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited; and

(2) pedestrians facing the signal may proceed across the street within any marked or unmarked crosswalk.

B. Yellow alone when shown following the green signal:

(1) vehicular traffic facing the signal is warned that the red signal will be exhibited immediately thereafter and the vehicular traffic shall not enter the intersection when the red signal is exhibited except to turn right as hereinafter provided; and

(2) no pedestrian facing the signal shall enter the street until the green is shown alone unless authorized to do so by a pedestrian "walk" signal.

C. Red alone:

(1) vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then before entering the intersection (66-7-105 NMSA 1978), and shall remain stopped until permitted to proceed by a green light or arrow (*), or may then turn right after standing until the intersection may be entered safely, provided that such vehicular traffic shall yield the right of way to all pedestrians and vehicles lawfully in or approaching the intersection; and

(2) vehicular traffic on a one-way street facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, then before entering the intersection, and if a left turn onto a one-way street in the proper direction is intended, may turn left after stopping until the intersection may be entered safely, provided that such vehicular traffic shall yield the right of way to all pedestrians and vehicles lawfully in or approaching the intersection;

(3) whenever the administrator determines on the basis of an engineering and traffic investigation that a turn as hereinabove provided should be prohibited at a particular intersection, such turn may be prohibited by the posting of signs at the intersection indicating that such a turn is prohibited; and

(4) no pedestrian facing the signal shall enter the street until the green is shown alone unless authorized to do so by a pedestrian "walk" signal.

D. Red with green arrow:

(1) vehicular traffic facing the signal may cautiously enter the intersection only to make the movement indicated by the arrow, but shall yield the right of way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection; and

(2) no pedestrian facing the signal shall enter the street unless he can do so safely and without interfering with any vehicular traffic.

E. If an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section apply except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.

F. When a sign is in place permitting a turn, vehicular traffic facing a steady red signal may cautiously enter the intersection to make the turn indicated by the sign after stopping as required by Subsection C (1). Vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. (66-7-105 NMSA 1978)

24-12-5-7. - PEDESTRIAN CONTROL SIGNALS.

Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place:

(1) "walk" indicates that pedestrians facing the signal may proceed across the street in the direction of the signal and shall be given the right of way by drivers of all vehicles; and

(2) "don't walk" indicates that no pedestrian shall start to cross the street in the direction of the signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing. (66-7-106 NMSA 1978)

24-12-5-8. - FLASHING SIGNALS.

A. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1) flashing red (stop signal)--when a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; or

(2) flashing yellow (caution signal)--when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

B. This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Sections 12-6-7.5 - 12-6-7.8 of this ordinance. (66-7-107 NMSA 1978)

24-12-5-9. - LANE-DIRECTION-CONTROL SIGNALS.

When lane-direction-control signals are placed over the individual lanes of a street, vehicular traffic may travel in any lane over which a green signal is shown, but a vehicle shall not enter or travel in any lane over which a red signal is shown. (*)

24-12-5-10. - DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.

A. No person shall place, maintain, or display upon or in view of any street any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movements of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

B. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the administrator is hereby empowered to remove the same or cause it to be removed without notice. (66-7-108 NMSA 1978)

C. The provisions of this section shall not prohibit the erection of signs upon private property adjacent to streets if the signs give useful directional information and are of a type that cannot be mistaken for official signs. (*)

24-12-5-11. - INTERFERENCE WITH OFFICIAL TRAFFIC-CONTROL DEVICES OR RAILROAD SIGNALS.

A. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or

signal or any inscription, shield, or insignia thereon, or any other part thereof. (66-7-109 NMSA 1978)

B. No person shall hide or obscure any official traffic-control device or railroad sign or signals by parking a vehicle or erecting any object or by allowing bushes, hedges, trees or other vegetation to grow so as to obscure traffic-control devices or railroad signals. An obstruction includes, but is not limited to, any sign, fence, ornament, hedge, shrub, tree or display, but it does not include a building.

C. Unobstructed vision for traffic safety shall be maintained by the property owner or occupant on all corner lots regardless of the zone classification. No obstruction between three and eight feet above the street level shall be placed or maintained within a triangular area bounded by the street property lines of the corner lot and a line connecting the points 25 feet distant from the intersection of the property lines of such lot.

D. Every obstruction interfering with official traffic-control devices or railroad signals is a public nuisance, and the administrator may remove the obstruction or cause it to be removed without notice and assess costs involved to the violator. (*)

24-12-5-12. - PLAY STREETS.

A. The administrator has authority to declare any street or part of a street a temporary play street and to place appropriate signs or devices in the street to indicate and help protect the street.

B. Whenever authorized signs are erected to indicate a play street, no person shall drive on the street except drivers of vehicles whose residences are within the closed area. Such drivers shall exercise the greatest care in driving on the play street. (*)

24-12-5-13. - CROSSWALKS AND SAFETY ZONES.

The administrator, upon the basis of engineering and traffic study investigations, may:

(1) designate and maintain crosswalks by appropriate devices, marks or lines on the surface of the street where, in his opinion, there is particular danger to pedestrians crossing the street; and

(2) establish safety zones of the kind and character and at places he deems necessary for the protection of pedestrians. (*)

24-12-5-14. - TRAFFIC LANES.

A. The administrator, upon the basis of engineering and traffic study investigations, may mark traffic lanes upon any street where a regular alignment of traffic is necessary.

B. Where such traffic lanes have been marked, it is unlawful for the operator of a vehicle to fail to keep the vehicle within the boundaries of the lane except when lawfully passing another vehicle or when making a lawful turning movement. (*)

ARTICLE SIX

24-12-6-1 SPEED REGULATIONS.

24-12-6-1.1 BASIC RULE.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding street and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (*)

24-12-6-1.2 SPEED LIMITS.

A. No person shall drive a vehicle on a street or detour at a speed greater than:

(1) fifteen (15) miles per hour on all streets when passing a school while children are going to, or leaving school, and when the school zone is properly posted;

(2) thirty (30) miles per hour in any business or residence district (66-7-301 NMSA 1978); or

(3) the lawfully posted speed limit when signs are erected giving notice of the speed limit. (*)

(4) the posted speed limit in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or highway and transportation department, provided that the posted speed limit be determined by an engineering study performed by the state highway and transportation department.

B. In every event, speed shall be so controlled as may be necessary:

(1) to avoid colliding with any person, vehicle or other conveyance on, or entering, the street;

(2) to comply with legal requirements as may be established by the municipality, the state highway department or the New Mexico state police, and the duty of all persons to use due care; and

(3) to protect workers in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or highway and transportation department. (66-7-301 NMSA 1978)

24-12-6-1.3. - ESTABLISHMENT OF SPEED ZONES.

A. Whenever the administrator determines, upon the basis of an engineering survey and traffic investigation, that any speed limit permitted under state law or local ordinance is greater or less than is reasonable or safe under the conditions found to exist upon any part of a street within his jurisdiction, he may declare a speed limit for that part which is effective at times determined, when appropriate signs giving notice thereof are erected at the particular part of the street.

B. Alteration of speed limits on state highways by the administrator are not effective until approved by the state highway commission. (66-7-303 NMSA 1978)

C. The administrator shall adhere to and abide by all applicable state statutes in making his determination of speed limits in the municipality.

D. Whenever the administrator declares a speed limit, he shall submit a schedule of the speed limit to the police department, the municipal judge, the municipal clerk and the municipal attorney. (*)

E. Speed zones may be marked by a sign containing a flashing yellow light and, when the light is in operation, the speed limit, instructions or regulations on the sign are in effect.

F. The provisions of Subsection A of this section shall not apply to changes of speed limit in construction zones authorized pursuant to 12-6-1.3 G through K of this section.

G. When construction, repair or reconstruction of any street or highway is being done, the administrator or other governmental authority with jurisdiction over that street or highway is authorized to designate as a construction zone that portion of the street or highway where construction, reconstruction or repair is being done and to close the construction zone to traffic or to provide for a single lane of traffic on any two-lane or four-lane highway in the construction zone. (66-7-303.1 NMSA 1978)

H. The administrator or other governmental authority closing all or a portion of a street or highway or providing for a single lane of traffic on any two-lane or four-lane

street or highway pursuant to Subsection G of this section shall erect or cause to be erected traffic-control devices or barricades to warn and notify the public of any change in speed limit and that such street or highway is closed or limited to a single lane of traffic. (66-7-303.1 NMSA 1978)

I. Every pedestrian or person who operates a vehicle on any street or highway shall obey all signs, signals, markings, flagmen or other traffic-control devices which are placed to regulate, control and guide traffic through a construction zone.

J. No person shall remove, change, modify, deface or alter any traffic-control device or barricade which has been erected on any street or highway pursuant to this section.

K. Any person who violates any provision of Subsection I or J of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with this code. (66-7-303.1 NMSA 1978)

24-12-6-1.4. - REGULATION OF SPEED BY TRAFFIC SIGNALS.

The administrator is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof. (*)

24-12-6-1.5. - MINIMUM SPEED REGULATION.

A. No person shall drive a motor vehicle at such slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with this ordinance.

B. Whenever the administrator determines on the basis of an engineering and traffic investigation that slow speeds on any part of a street consistently impede the normal and reasonable movement of traffic, the administrator may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with this ordinance. (66-7-305 NMSA 1978)

C. Police officers may enforce this section by directions to drivers. In the event of apparent willful disobedience to this section and refusal to comply with directions of an officer in accordance herewith, the continued slow operation by a driver is a violation of this section. (*)

24-12-6-1.6. - CHARGING VIOLATIONS.

A. In every charge of violation of any speed regulation under this ordinance, the complaint and the uniform traffic citation shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. Provisions of this ordinance for maximum speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident. (66-7-307 NMSA 1978)

24-12-6-1.7. - SPECIAL SPEED LIMITATIONS.

A. Subject to the requirements of Section 12-10-1.15 E of this ordinance, no person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten miles per hour. (66-7-306 NMSA 1978)

B. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in Section 66-7-306 (B) NMSA 1978.

24-12-6-2. - DRIVING ON RIGHT SIDE OF STREET--OVERTAKING AND PASSING--USE OF STREET.

24-12-6-2.1. - DRIVE ON RIGHT SIDE OF STREET--EXCEPTIONS.

A. Upon all streets of sufficient width, a vehicle shall be driven upon the right half of the street, and where practicable, entirely to the right of the center thereof, except as follows:

(1) when overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement (66-7-308 NMSA 1978);

(2) when an obstruction exists making it necessary to drive to the left of the center of the street, provided that any person driving to the left shall yield the right of way to all vehicles traveling in the proper direction on the unobstructed portion of the street (*);

(3) when the right half of the street is closed to traffic while under construction or repair (66-7-308 NMSA 1978)

(4) upon a street divided into three marked lanes for traffic under the rules applicable thereon; or

(5) upon a street designated and signposted for one-way traffic.

B. Upon all streets any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the street except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway. (66-7-308 NMSA 1978)

C. Upon any street having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the street, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the street for use by traffic not otherwise permitted to use such lanes, or except as permitted under Subsection 12-6-2.1A(2). However, this section shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway. (*)

24-12-6-2.2. - PASSING VEHICLES PROCEEDING IN OPPOSITE DIRECTION.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon streets having width for not more than one (1) line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the street as nearly as possible. (66-7-309 NMSA 1978).

24-12-6-2.3. - OVERTAKING A VEHICLE ON THE LEFT.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) the driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle; and

(2) except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (66-7-310 NMSA 1978)

24-12-6-2.4. - LIMITATIONS ON OVERTAKING ON THE LEFT.

No vehicle shall be driven to the left side of the center of the street in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the

opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the street before coming within one hundred feet of any vehicle approaching from the opposite direction. (66-7-312 NMSA 1978)

24-12-6-2.5. - FURTHER LIMITATIONS ON DRIVING ON LEFT OF CENTER OF STREET.

A. No vehicle shall at any time be driven to the left side of the street under the following conditions:

- (1) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
- (2) when approaching within one hundred feet of or traversing any intersection or railroad grade crossing; or
- (3) when the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel. (66-7-313 NMSA 1978)

B. The foregoing limitations shall not apply:

- (1) upon a one-way street;
- (2) under the conditions described in 12-6-2.1A(2); nor
- (3) to the driver of a vehicle turning left into or from an alley, private road or driveway. (*)

24-12-6-2.6. - WHEN OVERTAKING ON THE RIGHT IS PERMITTED.

A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (1) when the vehicle overtaken is making or about to make a left turn;
- (2) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction; or
- (3) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the street is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement

be made by driving off the pavement or main-traveled portion of the street. (66-7-311 NMSA 1978)

24-12-6-2.7. - NO PASSING ZONES AND RESTRICTIONS ON PASSING.

A. The administrator may determine those portions of any street or highway under his jurisdiction where overtaking and passing or driving on the left of the street would be especially hazardous and may, by appropriate signs or markings on the street indicate the beginning and end of such zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the direction thereof.

B. Where signs or markings are in place to define a no-passing zone as set forth in Subsection A of this section, no driver shall at any time drive on the left side of the street within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length. This section does not apply under the conditions described in Section 12-6-2.1A(3) or to the driver of a vehicle turning left into or from an alley, private road or driveway. (66-7-315 NMSA 1978)

C. When double yellow lines are painted on a pavement, no driver shall drive any vehicle across the lines except the driver of a vehicle turning left into or from an alley, private road or driveway.

D. No driver shall overtake and pass any other vehicle proceeding in the same direction in a school zone when the school zone signs are in place.

E. Whenever a vehicle is stopped at a marked crosswalk or an unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of the vehicle approaching from the rear shall not overtake and pass the stopped vehicle. (*)

24-12-6-2.8. - AUTHORITY TO DESIGNATE ONE-WAY STREETS AND ALLEYS.

A. The administrator may designate and sign streets and alleys as one-way streets and alleys. The designation shall be made only upon the basis of engineering and traffic investigation.

B. Signs indicating the direction of lawful traffic movement shall be placed at every intersection, where movement of traffic in the opposite direction is prohibited. No regulation as to one-way traffic shall be effective unless signs are in place indicating the direction of the flow of traffic.

C. The administrator shall maintain a schedule of all streets and alleys which have been established as one-way and shall provide copies of the schedule to the police department, municipal clerk, municipal judge and municipal attorney. (*)

24-12-6-2.9. - OBEDIENCE TO SIGNS DESIGNATING ONE-WAY STREETS AND ALLEYS.

A. Upon those streets and parts of streets and in those alleys restricted to movement in one direction, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.

B. Failure to comply with such signs is a violation of this ordinance. (*)

24-12-6-2.10. - ROTARY TRAFFIC ISLANDS.

A vehicle passing around a rotary traffic island shall be driven only to the right of such island. (66-7-316 NMSA 1978)

24-12-6-2.11. - RESTRICTED DIRECTION OF MOVEMENT ON STREETS DURING CERTAIN PERIODS.

A. The administrator may determine and designate streets, parts of streets or specific lanes upon which vehicular traffic shall proceed in one direction during one period of the day and the opposite direction during another period of the day. This designation shall be made only upon the basis of engineering and traffic investigation.

B. Appropriate markings, signs, barriers or other devices shall be placed to give notice of the restricted movement.

C. Signs may be placed temporarily designating lanes to be used by traffic moving in particular direction, regardless of the center line of the street. (*)

24-12-6-2.12. - DRIVING ON STREETS LANED FOR TRAFFIC.

Whenever any street has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) upon a street which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the street is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation;

(3) official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the directions of every such sign (66-7-317 NMSA 1978); and

(4) official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device. (*)

24-12-6-2.13. - FOLLOWING TOO CLOSELY.

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

B. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a street outside of a business or residence district shall not follow another motor truck or motor vehicle drawing another vehicle within three hundred (300) feet, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

C. Motor vehicles being driven upon any street outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall not follow the preceding vehicle closer than three hundred (300) feet. This provision shall not apply to funeral processions, nor shall it apply within or outside of a business or residence district to motor vehicle escort vehicles of a motor vehicle escort service, which may, if necessary to maintain the continuity of the escorted unit or units, precede or follow at a distance closer than three hundred (300) feet to the escorted unit or units. (66-7-318 NMSA 1978)

24-12-6-2.14. - DRIVING ON DIVIDED STREETS.

A. Whenever any street has been divided into two (2) roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand segment of the divided street (66-7-319 NMSA 1978), unless directed or permitted to use another segment by official traffic-control devices or police officers. (*)

B. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority. (66-7-319 NMSA 1978)

C. Where recessed cut-outs are provided in dividers to facilitate left turns, all vehicles, except those having a turning radius precluding use of such recessed cut-outs,

shall execute a left turn by occupying the recess or cut-out prior to entering the intersection. (*)

24-12-6-2.15. - CONTROLLED ACCESS.

No person shall drive a vehicle onto or from any controlled-access street except at such entrances and exits as are established by public authority. (66-7-320 NMSA 1978)

24-12-6-2.16. - RESTRICTIONS ON USE OF CONTROLLED-ACCESS STREETS.

A. No pedestrian, bicycle or other non-motorized traffic shall use any controlled-access street, but notwithstanding this provision, drivers of vehicles using the controlled-access street are not relieved of responsibility for exercising due care.

B. In addition to the provisions of paragraph A, the local governing body may, by ordinance, regulate or prohibit the use of any controlled-access street within its jurisdiction by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. (66-7-321 NMSA 1978)

C. No driver shall stop a vehicle upon any controlled-access street for the purpose of taking on or discharging passengers, freight or merchandise.

D. The administrator has the authority to erect and maintain official traffic-control devices on the controlled-access street on which the restrictions are applicable, and when such traffic-control devices are in place, no person shall disobey the restrictions stated on the devices. (66-7-321 NMSA 1978)

24-12-6-3. - DESIGNATING STOP AND YIELD INTERSECTIONS.

24-12-6-3.1. - THROUGH STREETS DESIGNATED.

A. The administrator, upon traffic and engineering study and investigation, may designate which streets shall be through streets.

B. A schedule of the through streets shall be prepared by the administrator with copies furnished to the police department, municipal clerk, municipal judge and municipal attorney. (*)

24-12-6-3.2. - AUTHORITY TO ERECT STOP AND YIELD SIGNS AT THROUGH STREETS.

A. Whenever the administrator designates and describes a through street, the city traffic engineer shall place and maintain a stop sign, or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting

the through street unless traffic at any such intersection is controlled at all times by traffic-control signals.

B. However, at the intersection of two through streets or at the intersection of a through street and heavy traffic street not so designated, stop signs shall be erected at the approaches to both of said streets in a manner determined by the administrator upon the basis of an engineering and traffic study. (*)

24-12-6-3.3 AUTHORITY TO ERECT STOP OR YIELD SIGNS AT OTHER INTERSECTIONS.

The administrator may determine and designate intersections other than through streets where particular hazards exist and determine:

(1) whether vehicles shall stop at one or more entrances to the intersection, in which event he shall have erected a stop sign at every place where a stop is required; or

(2) whether vehicles shall yield the right of way to vehicles on a different street at the intersection, in which event he shall have erected a yield sign at every place where obedience thereto is required. (*)

12-6-4 . - RIGHT OF WAY.

12-6-4.1. - VEHICLE APPROACHING OR ENTERING INTERSECTION.

A. The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different street.

B. When two vehicles enter an intersection from different streets at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

C. The right of way rules declared in Subsections A and B are modified at through streets and otherwise as provided in this ordinance. (66-7-328 NMSA 1978)

D. The driver of a vehicle approaching or entering an interstate highway shall yield the right of way to the vehicles on the interstate highway. (*)

24-12-6-4.2. - VEHICLES TURNING LEFT AT INTERSECTION.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having

given a signal when and as required by this ordinance, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right of way to the vehicle making the left turn. (66-7-329 NMSA 1978)

24-12-6-4.3 VEHICLE ENTERING STOP OR YIELD INTERSECTION.

A. Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in this ordinance.

B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by Section 12-6-4.3(D) and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another street or which is approaching so closely on the street as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

C. The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right of way to any vehicle in the intersection or approaching on another street so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right of way. (66-7-330 NMSA 1978)

D. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop completely before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street before entering the intersection.

E. The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street. (66-7-345 NMSA 1978)

24-12-6-5. - TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING.

24-12-6-5.1. - REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTION.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

A. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the street.

B. At any intersection where traffic is permitted to move in both directions on each street entering the intersection, an approach for a left turn, except where left-turn provisions are made, shall be made in that portion of the right half of the street nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the street being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

C. Upon a street with two (2) or more lanes for through traffic in each direction, where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this section.

D. At any intersection where traffic is restricted to one (1) direction on one (1) or more of the streets, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the street being entered. (66-7-322 NMSA 1978)

E. No person shall drive across any private or public property, including but not limited to parking areas, driveways and service station areas, for the purpose of avoiding any traffic control device or sign. (*)

24-12-6-5.2. - AUTHORITY TO PLACE DEVICES ALTERING NORMAL COURSE FOR TURNS.

The administrator may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in Section 12-6-5.1 be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by the markers, buttons or signs. (66-7-322 NMSA 1978)

24-12-6-5.3 AUTHORITY TO PLACE RESTRICTED TURN SIGNS.

A. The administrator may determine those intersections at which drivers of vehicles shall not make a right, left or U-turn and shall place proper signs at the intersections.

B. The making of the turns may be prohibited between certain hours of the day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when the turns are permitted. (*)

24-12-6-5.4. - OBEDIENCE TO NO-TURN SIGNS.

Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of the sign. (*)

24-12-6-5.5. - LIMITATIONS ON TURNING AROUND.

The driver of any vehicle may turn the vehicle so as to proceed in the opposite direction provided that the movement can be made safely and without interfering with other traffic and further provided that authorized signs disallowing U-turns have not been erected in the area; such turn shall not be made if to do so would violate any other traffic ordinance or statute.

24-12-6-5.6. - TURNING ON CURVE OR CREST OF GRADE PROHIBITED.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within one thousand feet. (66-7-323 NMSA 1978)

24-12-6-5.7. - STARTING PARKED VEHICLE.

A. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. (66-7-324 NMSA 1978)

B. No person shall move any parked vehicle without giving appropriate signals as prescribed in Sections 12-6-5.8 through 12-6-5.10. (*)

24-12-6-5.8. - TURNING AND STOPPING MOVEMENTS AND REQUIRED SIGNALS.

A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the street as required in Section 12-6-5.1 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a street unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

B. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. (66-7-325 NMSA 1978)

D. The signals provided for in this section shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not be flashed on one side only on a parked or disabled car or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear. (*)

24-12-6-5.9. - SIGNALS BY HAND AND ARM OR SIGNAL DEVICE.

A. Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamp or lamps or mechanical signal device except as otherwise provided in Subsection B.

B. Any motor vehicle in use on a street shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles. (66-7-326 NMSA 1978)

24-12-6-5.10. - METHOD OF GIVING HAND AND ARM SIGNALS.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signal shall indicate as follows:

- (1) left turn: hand and arm extended horizontally;
- (2) right turn: hand and arm extended upward; and
- (3) stop or decrease speed: hand and arm extended downward. (66-7-327 NMSA 1978)

24-12-6-6. - STOPPING, STANDING AND PARKING.

24-12-6-6.1. - STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES.

A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- (1) on a sidewalk;
- (2) in front of a public or private driveway;
- (3) within an intersection;
- (4) within fifteen feet of a fire hydrant;
- (5) on a crosswalk;
- (6) within twenty feet of a crosswalk at an intersection;
- (7) within thirty feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a street;
- (8) between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the end of a safety zone, unless the traffic authority indicates a different length by signs or markings;
- (9) within fifty feet of the nearest rail of a railroad crossing;
- (10) within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance, when properly signposted;
- (11) alongside or opposite any excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (12) on the street side of any vehicle stopped or parked at the edge or curb of a street;
- (13) upon any bridge or other elevated structure upon a street or within a street tunnel;
- (14) at any place where official signs prohibit stopping (66-7-351 NMSA 1978);
- (15) on any railroad track; or

(16) NOT ADOPTED – Per Ordinance 1364

B. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful. (66-7-351 NMSA 1978)

C. The foregoing provisions may be modified by the administrator or his designated representative upon the basis of an engineering and traffic investigation study by the use of appropriate markings, signs or parking meters. (*)

24-12-6-6.2 ADDITIONAL PARKING REGULATIONS.

A. Except as otherwise provided in this ordinance every vehicle stopped or parked upon a street where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb. (66-7-352 NMSA 1978)

B. Except when otherwise provided in this ordinance, every vehicle stopped or parked on a one-way street shall be so stopped or parked parallel to the curb or edge of the street with its right-hand wheels within 18 inches of the right-hand curb or edge of the street or its left-hand wheels within 18 inches of the left-hand curb or edge of the street. (*)

24-12-6-6.3. - STOPPED OR PARKED VEHICLES NOT TO INTERFERE WITH OTHER TRAFFIC.

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended, upon the traveled portion of any street outside of a business or residence district, when it is practicable to stop, park, or leave such vehicle off the traveled portion of the street. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the street, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicles as far as possible to the front and rear. (66-3-852 NMSA 1978)

24-12-6-6.4. - PARKING IN ALLEYS.

No person shall park a vehicle within an alley. Amended by Ordinance 1382

24-12-6-6.5. – NOT ADOPTED – Per Ordinance 1364

24-12-6-6.6. - PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park a vehicle on any street for the principal purpose of:

- (1) displaying the vehicle for sale; or
- (2) washing, greasing or repairing the vehicle except repairs necessitated by an emergency. (*)

24-12-6-6.7. - PARKING ADJACENT TO SCHOOLS PROHIBITED.

A. The administrator may erect signs indicating no parking on either or both sides of any street adjacent to any school property when parking would, in his opinion, interfere with traffic or create a hazardous situation.

B. When official signs are erected indicating no parking on either side of a street adjacent to any school property as authorized in this section, no person shall park a vehicle in any such designated place. (*)

24-12-6-6.8. - PARKING PROHIBITED ON NARROW STREETS.

A. The administrator may erect signs indicating no parking on any street when the width of the street does not exceed 24 feet or no parking upon one side of a street as indicated by such signs when the width of the street does not exceed 32 feet.

B. When official signs prohibiting parking are erected on narrow streets as authorized in this section, no person shall park a vehicle on any such street in violation of the sign. (*)

24-12-6-6.9. - STANDING OR PARKING ON ONE-WAY STREETS.

A. The administrator may erect signs on the left-hand side of any one-way street to prohibit the standing or parking of vehicles.

B. When such signs are in place, no person shall stand or park a vehicle on such left-hand side in violation of any such sign. (*)

24-12-6-6.10. - STANDING OR PARKING ON DIVIDED STREETS.

A. In the event a divided street includes two or more segments for vehicular traffic, and traffic is restricted to one direction on any such segment, no person shall stand or park a vehicle on the left-hand side of the one-way segment unless signs are erected to permit such standing or parking.

B. The administrator may determine where standing or parking may be permitted on the left-hand side of any such one-way portion of a divided street and to erect signs giving notice thereof. (*)

24-12-6-6.11. - NO STOPPING, STANDING OR PARKING NEAR HAZARDOUS OR CONGESTED PLACES.

A. The administrator may determine and designate by proper signs, places at intervals not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

B. When official signs are erected at hazardous or congested places as authorized in paragraph A, no person shall stop, stand or park a vehicle in any such designated place.
(*)

24-12-6-6.12. - STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS.

A. The provisions of this section prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

B. The provisions of this section imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

C. The administrator may impose restrictions or prohibitions on standing, stopping or parking and they shall apply as follows:

(1) when signs are erected prohibiting parking at all times on certain streets, no person shall park a vehicle at any time upon any of the streets so designated;

(2) when signs are erected in each block giving notice that stopping, standing or parking is prohibited during certain hours on certain streets, no person shall stop, stand or park a vehicle between the hours specified on the sign on any day, except Sundays and public holidays, within the district or on any of the streets so designated; or

(3) when signs are erected in each block giving notice that parking time is limited on certain streets, no person shall park a vehicle for longer than the time indicated on such signs between the hours of 8:00 A.M. and 6:00 P.M. of any day, except Sundays and public holidays, within the district or on any of the streets so designated.

D. Whenever by this or any other ordinance of this municipality, any parking time limit is imposed or parking is prohibited on designated streets, it is the duty of the administrator to erect appropriate signs giving notice of the restrictions or limitations.

E. No regulation authorized in this section shall be effective unless signs giving notice of prohibitions or limitations are erected and in place at the time of any alleged offense. (*)

24-12-6-6.13. - ANGLE PARKING AND PERMITS FOR LOADING OR UNLOADING AT AN ANGLE TO THE CURB.

A. The administrator may determine upon what streets angle parking is permitted and shall mark or sign such streets:

(1) any designation of angle parking shall be made on the basis of engineering and traffic study and investigation; (*)

(2) the administrator may permit angle parking on any street, except that angle parking shall not be permitted on any federal-aid or state highway unless the state highway commission has determined by resolution or order entered in its minutes that the street is of sufficient width to permit angle parking without interfering with the free movement of traffic; (66-7-352 NMSA 1978)

(3) angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive on the left side of the street; and

(4) on those streets which have been signed or marked by the administrator for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the street indicated by signs or markings. (*)

B. The administrator may issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of the permit:

(1) the permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to the permit holder the privilege stated in the permit and authorized in this ordinance; and

(2) no permittee or other person shall violate any of the special terms or conditions of a permit. (*)

24-12-6-6.14. - STOPPING, STANDING OR PARKING OUTSIDE OF BUSINESS OR RESIDENCE DISTRICTS.

A. Upon any street outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street when it is practicable to stop, park, or leave such vehicle off such part of said street, but in every event an unobstructed width of the street opposite

a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such street.

B. This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (66-7-349 NMSA 1978)

C. The state department of transportation, unless otherwise directed by an investigating police officer, or a police officer may remove or cause to be removed a vehicle or other obstruction from the paved or main-traveled part of a highway to the nearest place of safety if the vehicle or other obstruction obstructs traffic or poses a traffic hazard. (66-7-349 C NMSA 1978)

24-12-6-7. - SPECIAL STOPS REQUIRED.

24-12-6-7.1. - EMERGING FROM ALLEY, BUILDING, DRIVEWAY OR PRIVATE ROAD.

A. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or the sidewalk area extending across any alleyway or driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the street shall yield the right of way to all vehicles approaching on said street. (66-7-346 NMSA 1978)

B. The driver of a vehicle about to enter or cross a street from a private road or driveway shall yield the right of way to all vehicles approaching on said street. (66-7-331 NMSA 1978)

24-12-6-7.2. - STOP WHEN TRAFFIC OBSTRUCTED.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (*)

24-12-6-7.3. - STOPPING FOR SCHOOL BUS.

A. The driver of a vehicle upon approaching or overtaking from either direction any school bus which has stopped on the street, with special school bus signals in operation, for the purpose of receiving or discharging any school children, shall stop the vehicle at least ten feet before reaching the school bus and shall not proceed until the special school

bus signals are turned off, the school bus resumes motion or until signaled by the driver to proceed.

B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches in height.

C. The driver of a vehicle upon a street with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled access street and the school bus is stopped in a loading zone which is a part of or adjacent to such street and where pedestrians are not permitted to cross the roadway. (66-7-347 NMSA 1978)

D. It is unlawful to operate any flashing warning signal light on any school bus on any street except when the school bus is stopped or is about to stop on a street for the purpose of permitting school children to board or alight from the school bus. (66-7-348 NMSA 1978)

24-12-6-7.4. - OPERATION OF VEHICLE ON APPROACH OF MOVING AUTHORIZED EMERGENCY VEHICLE; OF ONCOMING VEHICLE--YIELD RIGHT OF WAY.

A. Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in that position, until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. (66-7-332 NMSA 1978)

B. Upon approaching a stationary authorized emergency vehicle or a recovery or repair vehicle displaying flashing emergency or hazard lights, unless otherwise directed, the driver of the vehicle shall:

(1) if reasonably safe to do so, drive in a lane not adjacent to the stationary vehicle, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or

(2) if it is not reasonably safe to drive in a lane not adjacent to the stationary vehicle [is stopped], decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop. (66-7-332 NMSA 1978)

C. Upon the immediate approach of an oncoming vehicle overtaking or attempting to overtake a vehicle proceeding in the same direction, the driver of that vehicle shall yield the right of way and shall drive to a position to and as close as possible to the right hand edge or curb of the roadway and shall remain as close as possible to the right hand edge or curb of the roadway until the oncoming vehicle has passed. (66-7-332.1 NMSA 1978)

D. This section shall not operate to relieve the driver of an authorized emergency vehicle or the driver of any other vehicle from the duty to drive with due regard for the safety of all persons using the highway. (66-7-322 and 66-7-322.1 NMSA 1978)

24-12-6-7.5. - RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--ALL DRIVERS.

A. A person driving a vehicle approaching a railroad-highway grade crossing shall:

(1) obey traffic control devices, crossing gates or barriers or the directions of an enforcement official at the crossing;

(2) stop not more than fifty feet and not less than fifteen feet from the nearest rail of a crossing if:

(a) a train is moving through or blocking the crossing;

(b) a train is plainly visible and approaching the crossing within hazardous proximity to the crossing;

(c) the sound of a train's warning signal can be heard; or

(d) a traffic control device, crossing gate, barrier or light or an enforcement official signals the driver to stop; and

(3) proceed through the railroad-highway grade crossing only if it is safe to completely pass through the entire railroad-highway grade crossing without stopping.

B. A person shall not:

(1) drive a vehicle through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or being opened or closed;

(2) drive onto the railroad-highway grade crossing and stop; or

(3) enter a crossing if the vehicle being driven has insufficient undercarriage clearance to pass over the crossing.

C. The penalty assessment for violation of this section is included in the penalty assessment schedule.

24-12-6-7.6. - ALL VEHICLES MUST STOP AT CERTAIN RAILROAD GRADE CROSSINGS.

The administrator, with the approval of the state highway commission, may designate particularly dangerous highway grade crossings of railroads and erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (66-7-342 NMSA 1978)

24-12-6-7.7. - RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--CERTAIN VEHICLES REQUIRED TO ALWAYS STOP--EXCEPTIONS

A. Except as set forth in Subsection D of this section, a driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo, before entering a railroad-highway grade crossing, is required to stop no more than fifty feet and no less than fifteen feet from the nearest rail of the railroad.

B. While stopped, the driver shall:

(1) look and listen in both directions along the track for an approaching train and for signals indicating that a train is approaching;

(2) determine it is safe to proceed completely through the railroad-highway grade crossing before entering it; and

(3) set the vehicle in a gear sufficiently low that gears will not need to be shifted before exiting the railroad-highway grade crossing.

C. A driver shall not shift gears while in a railroad-highway grade crossing.

D. A driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo is not required to stop at:

(1) a railroad-highway grade crossing where a police officer directs traffic to proceed;

(2) a railroad-highway grade crossing where a stop-and-go traffic light controls movement of traffic;

(3) a railroad-highway grade crossing used exclusively for industrial switching purposes, within a business district as defined in Section 66-1-4.2 NMSA 1978;

(4) a railroad-highway grade crossing where use of the railroad has been abandoned and there is a sign indicating that the railroad has been abandoned; or

(5) an industrial or spur line railroad-highway grade crossing marked with a sign reading "exempt crossing" that has been designated as exempt by appropriate state or local authorities.

E. Penalties for violation of this section are included in the penalty assessment schedule. (66-7-343 NMSA 1978)

24-12-6-7.8. - MOVING HEAVY EQUIPMENT AT RAILROAD GRADE CROSSINGS.

A. No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a street, upon or across any tracks at a railroad grade crossing without first complying with this section.

B. Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

C. Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

D. No such crossing shall be made when warning is given by automatic signal or crossing gates or flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

E. This section shall not apply to the normal movement of farm equipment in the regular course of farm operation. (66-7-344 NMSA 1978)

24-12-6-8. - PASSENGER AND FREIGHT CURB LOADING ZONES.

24-12-6-8.1. - AUTHORITY TO DESIGNATE CURB LOADING ZONES.

The administrator may determine the location of passenger and freight curb loading zones, and he shall place and maintain appropriate signs indicating the zones and stating the hours during which the provisions of sections 12-6-8.1 through 12-6-8.4 are applicable. (*)

24-12-6-8.2. - PERMITS FOR CURB LOADING ZONES.

A. The administrator shall not designate or sign any curb loading zone upon special request of any person unless the person makes application for a permit for the zone and for two signs to indicate the ends of each zone.

B. After the administrator has granted a permit and before signs and markings as may be necessary are installed, the applicant shall pay to the city treasurer a service fee of twenty-five dollars (\$25) per 22-foot stall plus twenty-five cents (\$.25) per foot for additional space per year or fraction thereof.

C. The administrator may impose conditions and general regulations for the use of the signs and for reimbursement of the city for the value thereof in the event of loss or damage and their return in the event of misuse or upon expiration of permit.

D. Every permit shall expire at the end of each calendar year. (*)

24-12-6-8.3. - STOPPING, STANDING OR PARKING IN PASSENGER CURB LOADING ZONES.

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to the curb loading zone are effective and then only for a period not to exceed three minutes. (*)

24-12-6-8.4. - STOPPING, STANDING OR PARKING IN FREIGHT CURB LOADING ZONES.

A. No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to freight curb loading zones are in effect. In no case shall the stop for loading and unloading of material exceed 30 minutes.

B. The driver of a passenger vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter the zone. (*)

24-12-6-9. - PUBLIC CARRIER STOPS AND STANDS.

24-12-6-9.1. - AUTHORITY TO DESIGNATE PUBLIC CARRIER STOPS AND STANDS.

A. The administrator may establish bus stops, bus stands, taxicab stands and stands for other passenger common-carrier motor vehicles on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public.

B. Every designated bus stop, bus stand, taxicab stand or other stand shall be designated by appropriate signs. (*)

24-12-6-9.2. - FEES AND PERMITS FOR PUBLIC CARRIER STOPS AND STANDS.

The following fees shall be charged to each person, firm or corporation for the use of taxicab stands, and permits for the stands shall expire at the end of each calendar year:

(1) one hundred dollars (\$100.00) per year or fraction thereof for each stand located within the central business district; and

(2) twenty-five dollars (\$25.00) per year or fraction thereof for each stall located in any area outside the central business district. (*)

24-12-6-9.3. - STOPPING, STANDING AND PARKING OF BUSES AND TAXICABS REGULATED.

The stopping, standing and parking of buses and taxicabs is regulated as follows:

A. The operator of a bus shall not stand or park the vehicle on any street at any place other than a bus stand so designated as provided in this ordinance.

B. The operator of a bus shall not stop the vehicle on any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in cases of emergency.

C. The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of the vehicle not farther than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

D. The operator of a taxicab shall not stand or park the vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other

stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers. (*)

24-12-6-9.4. - RESTRICTED USE OF BUS AND TAXICAB STANDS.

A. No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed.

B. However, the driver of a passenger vehicle may temporarily stop in a bus stop or taxicab stand for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone. (*)

24-12-6-10. - SCHOOL CROSSINGS.

A. Crosswalks may be established over streets abutting a school or the grounds adjacent thereto, and all children crossing the streets shall be required to do so within the marked crosswalks. The administrator, with advice of the local superintendent of schools, shall establish and mark, or cause to be marked, these street crossings.

B. Crosswalks over streets not abutting on school grounds may be established by the administrator, with advice of the local superintendent of schools and after adequate assurance has been given that proper safety precautions, pursuant to regulations of the administrator, will be maintained at the crossings by the school authorities to enforce their use by children.

C. At all school crossings except as provided in this section, appropriate signs shall be provided as prescribed by the administrator indicating the crossings and regulating traffic movement within the school zones.

D. School crossings are not required to be specifically posted when they are located:

(1) at a signalized intersection;

(2) at an intersection where traffic is controlled by a stop sign; or

(3) at a point where a pedestrian tunnel or overhead crossing is provided. (66-7-336 NMSA 1978)

24-12-6-11. - EXCESSIVE SIZE AND WEIGHT, SLOW-MOVING AND HAZARDOUS VEHICLES.

24-12-6-11.1. - PERMIT FOR EXCESSIVE SIZE AND WEIGHT---SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.

A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection by any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the

regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs (1) and (2) of this subsection is subject to department authority and inspection at all times.

(4) The state transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars (\$60). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions. (66-7-413 D NMSA 1978)

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars (\$15).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property tax.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing;

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission. (66-7-413 NMSA 1978)

N. Farm carriers, as defined in Sections 65-2-82 and 65-1-116 NMSA 1978, may transport loads up to twelve feet in width on highways that are not national network highways without acquiring permits or escorts only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than fifty miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters. (66-7-413.1 NMSA 1978)

O. No permit or fee required under this section is necessary for implements of husbandry, including farm tractors and farm trailers when not more than two such farm trailers are towed in tandem, being moved during daylight hours within a county or an adjacent county for a total distance, one way, of not more than fifty miles on any highway:

(1) crossing the farm property of the owner; or

(2) running between separate farm property of the owner. Any person responsible for the movement of implements of husbandry under the provisions of this section shall comply with all safety precautions set forth in this ordinance and in regulations of the state highway commission. (66-7-414 NMSA 1978)

24-12-6-11.2. - SLOW-MOVING VEHICLE IDENTIFICATION.

A. As used in this section, "slow-moving vehicle" means any vehicle which is ordinarily moved, operated or driven at a speed less than twenty-five miles an hour.

B. Each slow-moving vehicle moved, operated or driven on a highway which is open for vehicular travel shall display a slow-moving vehicle emblem or flashing amber light as required by Section 66-3-887 NMSA 1978.

C. Use of the emblem is confined to slow-moving vehicles, and its use on any other type of vehicle or on any stationary object is prohibited. This section does not prohibit the use on slow-moving vehicles of red flags or lawful lighting devices in addition to the slow-moving vehicle emblem.

D. No person shall sell, lease, rent or operate any slow-moving vehicle unless the slow-moving vehicle is equipped with a slow-moving vehicle emblem. (66-3-887 NMSA 1978)

24-12-6-11.3. - ESCORT TO BE FURNISHED FOR MOVEMENT OF HAZARDOUS VEHICLES.

A. When, in the judgment of the administrator, the movement of any vehicle is deemed a hazard to traffic upon a street over which the vehicle is to travel, the granting of permission for the movement thereof may be conditioned upon a special escort accompanying the hazardous vehicle.

B. The special police car escort to safeguard traffic during the movement of the hazardous vehicle shall conform to the provisions of Section 66-7-314 NMSA 1978. (66-7-314 NMSA 1978)

24-12-6-12. - DRIVING REGULATIONS AND OFFENSES.

24- 12-6-12.1. - OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; CHEMICAL TESTING; OFFICER TO FILE STATEMENT; IMMEDIATE LICENSE REVOCATION.

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this municipality.

B. It is unlawful for:

(1) a person to drive a vehicle in this state if the person has an alcohol concentration of eight one-hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle; or

(2) a person to drive a commercial motor vehicle in this state if the person has an alcohol concentration of four one hundredths or more in the person's blood or breath within three hours of driving the commercial motor vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

C. It is unlawful for a person who is under the influence of any drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this municipality. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this state is not a defense against the charge.

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

(1) drives a vehicle in this state and has an alcohol concentration of sixteen one-hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle;

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

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act (66-8-105 to 66-8-112 NMSA 1978), and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs. (66-8-102 NMSA 1978).

E. Any person who operates a motor vehicle within this municipality shall be deemed to have given consent, subject to the provisions of the Implied Consent Act, to chemical tests of his breath or blood or both, approved by the scientific laboratory division of the Department of Health pursuant to the provision of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purpose of determining the drug or alcoholic content of his blood, if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or any drug.

F. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this municipality, while under the influence of intoxicating liquor or drug. (66-8-107 NMSA 1978)

G. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by Section 12-6-12.1E, and the test or tests designated by the law enforcement officer may be administered. (66-8-108 NMSA 1978)

H. Only the persons authorized by Section 66-8-103 NMSA 1978 shall withdraw blood from any person for the purpose of determining its drug or alcoholic content. This limitation does not apply to the taking of samples of breath.

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

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

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

L. If a person exercises his right under Subsection I to have a chemical test performed upon him by a person of his own choosing, then the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under Subsection E. (66-8-109 NMSA 1978)

M. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drug.

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

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

(2) an alcohol concentration of at least four one-hundredths but less than eight one-hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor unless the person is driving a commercial vehicle and the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether or not the person was under the influence of intoxicating liquor;

(3) an alcohol concentration of eight one-hundredths or more, the arresting officer shall charge him with a violation of this section; or

(4) an alcohol concentration of four one-hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor. (66-8-110 NMSA 1978)

O. If the test performed pursuant to the Implied Consent Act is administered more than three hours after the person was driving a vehicle, the test result may be introduced as evidence of the alcohol concentration in the person's blood or breath at the time of the test and the trier of fact shall determine what weight to give the test result for the purpose of determining a violation of Sec. 12-6-12.1. (66-8-110 NMSA 1978)

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

Q. The presumptions in Subsection N of this section do not limit the introduction of other competent evidence concerning whether or not a person was under the influence of intoxicating liquor. (66-8-110 NMSA 1978)

R. Nothing in this section is intended to authorize any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol test, except in the performance of his official duties and as otherwise authorized by law. (66-8-104 NMSA 1978)

S. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 12-6-12.1 E and F, none shall be administered, except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 12-6-12.1 E and F, upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of intoxicating alcohol or drug thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of intoxicating alcohol or drug and that chemical tests as provided in

Section 12-6-12.1 E and F will produce material evidence in a felony prosecution. (66-8-111 NMSA 1978)

T. If a law enforcement officer has reasonable grounds to believe that a person arrested for violation of Subsections A, B, C or D of this section had been driving a motor vehicle within this municipality while under the influence of intoxicating liquor or drug and that upon his request, the person refused to submit to a chemical test, after being advised that failure to submit could result in revocation of his privilege to drive, then the law enforcement officer shall transmit to the director a statement signed under penalty of perjury stating what such reasonable grounds were and stating that the person refused to submit to a chemical test after being advised of the consequences of such refusal.

U. On behalf of the director, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 12-6-12.1 E and F shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of eight one-hundredths or more if the person is twenty-one years of age or older, four one-hundredths or more if the person is driving a commercial vehicle or two one-hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the director along with the signed statement required pursuant to Subsection S of this section. (66-8-111.1 NMSA 1978)

24-12-6-12.2. - OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES. Amended June, 2010

A. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug (12-6-12.1A through D) the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter. (66-8-110 NMSA 1978)

B. When a person is charged with a violation of 12-6-12.1A through D, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to violation 12-6-12.1A, B, C or D and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized if:

(1) the results of a test performed pursuant to the Implied Consent Act discloses that the blood of the person charged contains an alcohol concentration of eight one-hundredths or more; (66-8-102 NMSA 1978 as amended)

(2) four one-hundredths or more if the person is driving a commercial vehicle; or

(3) the defendant has refused to submit to a chemical test or tests of his breath or blood. (66-8-102 NMSA 1978)

C. A person under first conviction pursuant to this section shall be punished by imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than twenty-four hours of community service. In addition, the offender may be required to pay a fine of three hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection F of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the traffic safety bureau of the state transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of parole, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this section for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, time spent in jail for the offense prior to the conviction for that offense shall be credited to any to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

D. A second or third conviction pursuant to this section shall be punished by imprisonment for not more than one hundred seventy-nine days or by a fine of not more than nine hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or part, the period of probation may extend beyond one hundred seventy-nine days but shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, each offender shall be sentenced to a jail term of not less than ninety-six consecutive hours, not less than forty-eight hours of community service and a fine of five hundred dollars (\$500.00). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days, not less than ninety-six hours of community service and a fine of nine hundred ninety-nine dollars (\$999.00). In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

E. Fourth and subsequent offenses shall be prosecuted under state law in magistrate or district court. (66-8-102 NMSA 1978)

F. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, with a time specified by the court, an alcohol or drug abuse screening program approved by the Department of Finance and Administration and if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

G. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

(1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse program approved by the court;

(2) not less than a ninety-day outpatient treatment program approved by the court;

(3) a drug court program approved by the court; or

(4) any other substance abuse treatment approved by the court.

The requirement imposed pursuant to this section shall not be suspended, deferred or taken under advisement. (66-8-102 NMSA 1978)

H. Upon a conviction pursuant to section 12-6-12.1, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the Traffic Safety Bureau of the Department of Transportation. Unless determined by the Traffic Safety Bureau to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. The offender shall operate only those vehicles equipped with ignition interlock devices for:

(1) a period of one year, for a first offender;

(2) a period of two years, for a second conviction pursuant to this section;

(3) a period of three years, for a third conviction pursuant to this section; or

(4) the remainder of the offender's life, for a fourth or subsequent conviction pursuant to this section.

I. A person who is issued an ignition interlock license and operates a vehicle that is not equipped with an ignition interlock device is driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act and may be subject to the penalties provided in section 12-6-12.6.

J. A person who is issued an ignition interlock license and who knowingly and deliberately tampers or interferes or causes another to tamper or interfere with the proper and intended operation of an ignition interlock device may be subject to the penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act as provided in Section 12-6-12.6. (66-5-504 NMSA 1978)

K. Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to a district court for removal of the ignition interlock device requirement provided in this section and for restoration of a driver's license. A district court may, for good cause shown, remove the ignition interlock device requirement and order restoration of the license; provided that the offender has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an alcohol screening and proof from the interlock vendor that the person has not had violations of the interlock device. (66-8-102 NMSA 1978)

L. An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use. (66-8-102 NMSA 1978)

M. Except as otherwise prohibited in this section, a municipal judge may suspend in whole or in part the execution of sentence or place the defendant on probation for a period not exceeding one year on terms and conditions that municipal judge deems best, or both, or defer sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall be granted only as allowed in Subsection N of this section. A suspension of execution of sentence or probation, or both, as allowed pursuant to this section, shall be granted only when the municipal judge is satisfied it will serve the ends of justice and of the public, and that the defendant's liability for any fine or other punishment imposed is fully discharged upon successful completion of the terms and conditions of probation.

N. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D, a first offender, at the discretion of a trial court after a presentence investigation, including an inquiry to the motor vehicle division of the transportation department concerning the driver's driving record, may receive a deferred sentence on the condition that the driver attend a driver rehabilitation program, also known as the "driving-while-intoxicated-school," approved by the court and the division and such other rehabilitative services as the court may determine to be necessary; however, imposition of a deferred sentence shall classify the person as a first offender. The municipal court shall forward to the division the abstract of all proceedings and the report of the disposition of the case. For the purpose of this subsection, marijuana, as defined in the Controlled Substance Act, shall be classified as a drug. (*)

O. A person convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D shall be assessed, in addition to any other fee or fine, a fee of eighty-five dollars (\$85.00) to defray the cost of chemical and other tests used to determine the influence of alcohol or drugs. Additionally, the person shall be assessed a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs or for other traffic safety purposes. The municipal court shall collect the fees and maintain the fees in separate funds and transfer the fees along with other funds collected by the court per 35-14-7 NMSA 1978. The municipality shall maintain the fees pursuant to this subsection in separate funds and transfer the fees collected pursuant to this subsection to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund. (31-12-7 through 31-12-9 NMSA 1978)

P. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation. (66-8-102 NMSA 1978)

Q. As used in this section and in 12-6-12.1:

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

(2) "conviction" means adjudication of guilt and does not include imposition of a sentence.

(3) "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(b) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law.

R. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory, or possession of the United States or of a tribe where that ordinance is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction. (66-8-102. NMSA 1978)

S. A law enforcement officer making an arrest for a violation of the provisions of 12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports

and procedures developed and approved by the Department of Public Safety in accordance with Section 8 of Laws of 2005, Chapter 269.

24-12-6-12.3. - RECKLESS DRIVING.

A. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.

B. NOT ADOPTED

24-12-6-12.4. - CARELESS DRIVING.

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

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

24-12-6-12.5. - OPERATORS AND CHAUFFEURS MUST BE LICENSED.

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

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

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

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

24-12-6-12.6. - UNLAWFUL USE OF LICENSE; DRIVING WHEN PRIVILEGE TO DO SO HAS BEEN SUSPENDED OR REVOKED.

No person shall:

A.

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

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

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

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

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

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

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

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

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

24-12-6-12.7. - FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER.

No driver of a motor vehicle shall willfully fail or refuse to bring his vehicle to a stop, or otherwise flee or attempt to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop.

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

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

24-12-6-12.8. - UNATTENDED MOTOR VEHICLE.

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

24-12-6-12.9. - LIMITATIONS ON BACKING.

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

- (1) unless the movement can be made with reasonable safety and without interfering with other traffic;
- (2) upon any shoulder or roadway of any controlled-access street, or upon the exit or entry road of any controlled-access street; (66-7-354 NMSA 1978)
- (3) into an intersection or around a corner unless preceded by an observer to safely direct the movement; or
- (4) from a private driveway into any street unless the movement can be made with safety and without interfering with other traffic on the street. (*)

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

24-12-6-12.10. - OBSTRUCTION TO DRIVER'S VIEW OR DRIVING MECHANISM.

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

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

24-12-6-12.11. - RESTRICTION ON USE OF TELEVISION IN MOTOR VEHICLES.

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

24-12-6-12.12. - COASTING PROHIBITED.

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

24-12-6-12.13. - FOLLOWING FIRE APPARATUS PROHIBITED.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet, or drive into or park such

vehicle within the block where fire apparatus has stopped in answer to a fire alarm. (66-7-361 NMSA 1978)

24-12-6-12.14. - CROSSING FIRE HOSE.

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

24-12-6-12.15. - DRIVING THROUGH SAFETY ZONES PROHIBITED.

No vehicle shall at any time be driven through or within a safety zone. (66-7-361 NMSA 1978)

24-12-6-12.16. - VEHICLES SHALL BE DRIVEN ONLY ON STREETS, PRIVATE ROADS AND DRIVEWAYS.

No driver of a vehicle shall operate or be in control of a vehicle on other than the portions of streets improved, designed and ordinarily used for vehicular traffic, private roads, driveways or alleys in this municipality, except as otherwise provided by this ordinance or as otherwise authorized or designated by the administrator or his designated representative. (*)

24-12-6-12.17. - DRIVING ON SIDEWALK AND PRIVATE PROPERTY.

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

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

24-12-6-12.18. - PROHIBITED ACTIVITIES WHILE DRIVING.

No person shall:

- (1) drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;
- (2) drive while having in his lap any person, adult or minor, or any animal;
- (3) drive while seated in the lap of another person while the vehicle is in motion;
- (4) drive a vehicle while having either arm around another person; or

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

24-12-6-12.19. - RACING ON STREETS. Amended July, 2007

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

B. As used in this section:

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

(2) "race" means the use of one (1) or more vehicles in a manner to outgain or outdistance another vehicle, prevent another vehicle from passing, arrive at a given destination ahead of another vehicle or test the physical stamina or endurance of drivers over long-distance routes. (66-8-115 NMSA 1978)

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

24-12-6-12.20. - PROCESSIONS.

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

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

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

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

24-12-6-12.21. - DRIVER TO TAKE PRECAUTIONS APPROACHING THE BLIND.

A. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color, with or without a red tip, or using a guide dog shall take all necessary precautions to avoid injury to the blind pedestrian. Any driver who fails to take necessary precautions shall be liable in damages for any injury caused to the pedestrian.

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

24-12-6-12.22. - OFFENSES BY PERSONS OWNING OR CONTROLLING VEHICLES.

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

24-12-6-12.23. - PERMITTING UNAUTHORIZED PERSONS TO DRIVE.

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

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

24-12-6-12.24. - PARTIES TO UNLAWFUL ACTS.

Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be unlawful, whether individually or in connection

with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this ordinance or of the Motor Vehicle Code is likewise guilty of such offense. (66-8-120 NMSA 1978)

24-12-6-13. - MISCELLANEOUS TRAFFIC REGULATIONS.

24-12-6-13.1. - OFFENSES RELATING TO DRIVING UNDER THE INFLUENCE.

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

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

24-12-6-13.2. - UNLAWFUL RIDING.

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

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

24-12-6-13.3. - UNHITCHED TRAILER ON STREET.

No person shall leave any type of trailer unhitched upon a street. (*)

24-12-6-13.4. - MOVING OR MOLESTING UNATTENDED VEHICLES.

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

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

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

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

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

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

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

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

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

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

24-12-6-13.5. - DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY.

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

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

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

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

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

24-12-6-13.6. - TRAINS AND BUSES NOT TO OBSTRUCT STREETS.

No person or corporation shall direct the operation of or operate any railroad train or bus in such manner to prevent the use of any street for purposes of travel for a period of time longer than five minutes. (*)

24-12-6-13.7. - BOARDING OR ALIGHTING FROM VEHICLES.

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

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

24-12-6-13.8. - IMPROPER OPENING OF DOORS.

No person shall:

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

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

24-12-6-13.9. - OCCUPIED MOVING HOUSE TRAILER.

No person shall:

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

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

24-12-6-13.10. - ANIMALS ON STREET.

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

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

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

24-12-6-13.11. – NOT ADOPTED – Per Ordinance 1390

24-12-6-13.12. - CHILD PASSENGER RESTRAINT; PENALTY; ENFORCEMENT.

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

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

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

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

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

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

C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the

center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

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

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

24-12-6-13.13 MANDATORY USE OF SEATBELTS.

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

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

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

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

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

24-12-6-13.14. - CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS IN A MOTOR VEHICLE PROHIBITED--EXCEPTIONS.

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

B. No person shall have in his possession on his person, while in a motor vehicle upon any street within this municipality, any bottle, can or other receptacle containing

any alcoholic beverage which has been opened or had its seal broken or the contents of which have been partially removed.

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

- (1) the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;
- (2) the living quarters of a motor home or recreational vehicle;
- (3) a truck camper;
- (4) the bed of a pick-up truck when the bed is occupied by passengers.

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

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

- (1) any person who, upon the recommendation of a doctor, carries alcoholic beverages in that persons motor vehicle for medicinal purposes;
- (2) any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or his agent's motor vehicle; or
- (3) any person who is employed by a person licensed by the Alcoholic Beverage Control Act, while discharging his duties as an employee (66-8-138)

E. Penalties

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

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

24-12-6-13.15. - LITTERING

A. Littering consists of discarding refuse:

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

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

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

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

24-12-6-14. - PEDESTRIANS' RIGHTS AND DUTIES.

24-12-6-14.1. - PEDESTRIAN OBEDIENCE TO TRAFFIC-CONTROL DEVICES AND TRAFFIC REGULATIONS.

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

24-12-6-14.2. - PEDESTRIANS RIGHT OF WAY IN CROSSWALKS. Amended July, 2007

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

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

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

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

24-12-6-14.3. - PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (66-7-338 NMSA 1978)

24-12-6-14.4. - CROSSING AT OTHER THAN CROSSWALKS.

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

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

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

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

24-12-6-14.5. - PEDESTRIANS ON STREETS.

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

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

24-12-6-14.6. - PEDESTRIANS SOLICITING RIDES OR BUSINESS.

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

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

24-12-6-14.7. - OBEDIENCE OF PEDESTRIANS TO BRIDGE AND RAILROAD SIGNALS.

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

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

24-12-6-14.8. - DRIVERS TO EXERCISE DUE CARE.

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

24-12-6-15. - REFERENCE TO VEHICLES UPON THE STREETS.

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

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

24-12-6-16. - ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES Amended July, 2007

A. As used in this section, "electric personal assistive mobility device" means a self-balancing device having two non-tandem wheels designed to transport a single person by means of an electric propulsion system with an average power of one horsepower and with a maximum speed on a paved level surface of less than twenty miles per hour when powered solely by its propulsion system and while being ridden by an operator who weighs one hundred seventy pounds.

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

(1) front, rear and side reflectors;

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

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

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

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

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

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

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

24-12-6-16.1 NEIGHBORHOOD ELECTRIC CARS Added July, 2007

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

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

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

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

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

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

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

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

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

24-12-6-17 BOATING REGULATIONS AND OFFENSES, BOATING WHILE INTOXICATED ACT – Entire Section not adopted per Ordinance 1364

24-12-6-17.1. NOT ADOPTED

24-12-6-17.2. – NOT ADOPTED

24-12-6-17.3. – NOT ADOPTED

24-12-6-17.4. – NOT ADOPTED

24-12-6-17.5. – NOT ADOPTED

24-12-6-17.6. – NOT ADOPTED

24-12-6-17.7. – NOT ADOPTED

24-12-6-17.8. – NOT ADOPTED

24-12-6-17.9. – NOT ADOPTED

24-12-6-17.10. – NOT ADOPTED

24-12-6-18. - TEXTING WHILE DRIVING

A. A person shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle, except to summon medical or other emergency help or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

B. The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a handheld mobile communications device. Unless otherwise provided by law, the handheld mobile communication device used in the violation of the provisions of this section is not subject to search by a law enforcement officer during a traffic stop made pursuant to the provisions of this section.

C. As used in this section:

(1) “driving” means being in actual physical control of a motor vehicle on a highway or street and includes being temporarily stopped because of traffic, a traffic light or stop sign or otherwise, but “driving” excludes operating a motor vehicle when the vehicle has pulled over to the side of or off an active roadway and has stopped at a location in which it can remain safely stationary;

(2) “handheld mobile communication device” means a wireless communications device that is designed to receive and transmit text or image messages, but “handheld mobile communications device” excludes global positioning or navigation systems, devices that are physically or electronically integrated into a motor vehicle and voice-operated or hands-free devices that allow the user to compose, send or read a text message without the use of a hand except to activate, deactivate or initiate a feature or function; and

(3) “text message” means a digital communication transmitted or intended to be transmitted between communication devices and includes electronic mail, an instant message, a text or image communication and a command or request to an internet site; but “text message” excludes communications through the use of a computer-aided dispatch service by law enforcement or rescue personnel.

D. A violation of provisions of this section is punishable by a fine of \$25 for a first violation and \$50 for a second or subsequent violation. Violations of provisions of this section may be included in a local penalty assessment ordinance.

ARTICLE SEVEN

24-12-7-1. - TRAFFIC REGULATIONS APPLY TO PERSONS OPERATING MOTORCYCLES.

Every person operating a motorcycle shall be granted all the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this ordinance, except as to special regulations in Sections 12-7-1 through 12-7-8 and except as to those provisions of this ordinance which by their nature can have no application. (*)

24-12-7-2. - OPERATING MOTORCYCLES ON STREETS LANED FOR TRAFFIC.

A. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This section shall not apply to motorcycles operated two abreast in a single lane.

B. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken, except that this provision shall not apply to police officers in the performance of their official duties.

C. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles, except that this provision shall not apply to police officers in the performance of their official duties.

D. Motorcycles shall not be operated more than two abreast in a single lane. (*)

24-12-7-3. - CLINGING TO OTHER VEHICLES.

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a street. (*)

24-12-7-4. - RIDING ON MOTORCYCLES.

A. A person operating a motorcycle, motor scooter or motor-driven cycle shall ride only upon the permanent and regular seat attached thereto, and shall have his feet upon the footrests provided on the machine.

B. The operator shall not carry any other person nor shall any other person ride on a motorcycle, motor scooter or motor-driven cycle unless it is designed to carry more than one person. If a motorcycle, motor scooter or motor-driven cycle is designed to carry more than one person, the passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the motorcycle, motor scooter or motor-driven cycle. The passenger shall have his feet upon the footrests attached for passenger use. (66-7-355 NMSA 1978)

C. No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

D. No operator of a motorcycle shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator. (*)

24-12-7-5. - EYE-PROTECTIVE DEVICES OR WINDSHIELDS.

Any person operating a motorcycle, motor scooter or motor-driven cycle, not having a fixed windshield of a type approved by regulation of the secretary, shall wear an eye-protective device which may be a faceshield attached to a safety helmet, goggles or safety eyeglasses. All eye-protective devices or windshields shall be of a type approved by regulations authorized by 66-7-355 NMSA 1978. (66-7-355 NMSA 1978)

24-12-7-6. - MANDATORY USE OF PROTECTIVE HELMET.

A. No person under the age of eighteen shall operate a motorcycle unless he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards authorized by 66-7-356 NMSA 1978. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of eighteen unless the lessee or renter shows such person a valid operator's license or permit and possesses the safety equipment required of an operator who is under the age of eighteen. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this section, meeting the standards specified by the director.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence.

C. Autocycles are exempted from the helmet provisions of this section. . (66-7-356 NMSA 1978)

24-12-7-7. - FOOTRESTS AND HANDLEBARS.

A. Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger. (*)

24-12-7-8. - MOTORCYCLE MANEUVERABILITY.

A. No motorcycle shall be equipped in a manner such that it is incapable of turning a ninety-degree angle with a circle having a radius of not more than fourteen feet. Evidence of a motorcycle being unable to turn a ninety degree angle within a circle having a radius of not more than fourteen feet shall be prima facie evidence of an unsafe vehicle as described in Section 12-10-1.1.

B. For the purposes of this section, a police officer may require the driver of a motorcycle to demonstrate the ability of any motorcycle to be ridden as described in

Subsection A of this section. Failure or refusal of any operator to demonstrate the ability of any motorcycle being operated upon the highways shall be prima facie evidence of an unsafe vehicle as described in Section 12-10-1.1. (66-3-842 NMSA 1978)

24-12-7-8.1. - MOTORCYCLE ENDORSEMENT NOT REQUIRED FOR AUTOCYCLE OPERATION.

Autocycles shall be registered as motorcycles and proof of financial responsibility may characterize them as motorcycles, but a driver shall not be required to have a motorcycle endorsement to operate an autocycle. (66-3-1.4 NMSA 1978)

24-12-7-9. - OFF-HIGHWAY MOTOR VEHICLES – DEFINITIONS – Amended by Ordinance 1529

As used in this section:

A. “off-highway motor vehicle” means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

- (1) “all-terrain vehicle,” which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;
- (2) “off-highway motorcycle,” which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control; or
- (3) “recreational off-highway vehicle,” which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons and having;
 - (a) a steering wheel for steering control;
 - (b) non-straddle seating;
 - (c) maximum speed capability greater than 35 miles per hour;
 - (d) gross vehicle weight rating no greater than 1,750 pounds;
 - (e) less than 80 inches in overall width, exclusive of accessories;
 - (f) engine displacement of less than 1,000 cubic centimeters; and
 - (g) identification by means of a 17-character vehicle identification number;

- (4) by rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off-highway for recreational purposes;

24-12-7-9.1. – NOT ADOPTED – Per Ordinance 1529

24-12-7-9.2. - OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON STREETS OR HIGHWAYS -- PROHIBITED AREAS.

A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in Subsection B, C, D or E of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. If authorized by ordinance or resolution of a local authority or the State Transportation Commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing authority if:

- (1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;
- (2) the vehicle has brakes, mirrors and mufflers;
- (3) the operator has valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;
- (4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act; and
- (5) the operator of the vehicle is using eye protection that comply with the Off-Highway Motor Vehicle Act; and
- (6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.

D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a paved street or highway shall be

subject to the requirements and penalties for operators of moving or parked vehicles under the Motor Vehicle Code.

E. NOT ADOPTED – Per Ordinance 1529

F. NOT ADOPTED – Per Ordinance 1529

G. NOT ADOPTED – Per Ordinance 1529

H. NOT ADOPTED – Per Ordinance 1529

24-12-7-9.3. – NOT ADOPTED – Per Ordinance 1529

24-12-7-9.4. – NOT ADOPTED – Per Ordinance 1529

24-9-9.5.1.1. - NOT ADOPTED – Per Ordinance 1529

24-12-7-9.6. – NOT ADOPTED – Per Ordinance 1529

24-12-7-9.7. – NOT ADOPTED – Per Ordinance 1529

24-12-7-9.7. – NOT ADOPTED – Per Ordinance 1529

12-7-9.9. - OPERATION AND EQUIPMENT – SAFETY REQUIREMENTS

A. A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

(6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling, unless the person operates the vehicle on a closed course or track or a public roadway;

(8) unless in possession of the person's registration certificate or nonresident permit;

(9) unless the vehicle is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(10) when conditions such as darkness limit visibility to five hundred feet or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty feet; and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet under normal atmospheric conditions; or

(11) that produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287; or

(12) where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

B. A person under the age of eighteen shall not operate an off-highway motor vehicle

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the department ;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

C. A person under the age of eighteen but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen who has a valid driver's license. This subsection shall not apply to a person who is at least:

(1) thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the department ; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department .

E. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition. (66-3-1010.3 NMSA 1978)

24-12-7-9.10. – NOT ADOPTED – Per Ordinance 1529

24-12-7-10. - MOPEDS--STANDARDS--OPERATOR REQUIREMENTS-APPLICATION OF MOTOR VEHICLE CODE.

A. Mopeds shall comply with those motor vehicle safety standards deemed necessary and prescribed by the director of motor vehicles.

B. Operators of mopeds shall have in their possession while operating a moped a valid operator's or restricted operator's license of any class issued to them.

C. Except as provided in Subsections A and B of this section, none of the provisions of the New Mexico Motor Vehicle Code or of this ordinance relating to motor vehicles or motor-driven cycles as defined in these codes shall apply to a moped. (66-3-1101 NMSA 1978).

ARTICLE EIGHT

24-12-8-1. - EFFECT OF REGULATIONS.

A. The parent of any child and the guardian of any ward shall not authorize or permit any such child or ward to violate any of the provisions of this ordinance.

B. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (66-3-701 NMSA 1978)

24-12-8-2. - TRAFFIC ORDINANCE APPLIES TO PERSONS RIDING BICYCLES.

Every person riding a bicycle upon a street shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle, except as to the special regulations within Sections 12-8-1 through 12-8-23. (66-3-702 NMSA 1978)

24-12-8-3. - RIDING BICYCLES.

A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (66-3-703 NMSA 1978)

24-12-8-4. - CLINGING TO VEHICLES.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a street. (66-3-704 NMSA 1978)

24-12-8-5. - RIDING ON STREETS AND BICYCLE PATHS.

A. Every person operating a bicycle upon a street shall ride as near to the right side of the street as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. (66-3-705 NMSA 1978) It shall not be considered practicable to ride as near to the right side of the street under the following circumstances:

(1) when overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) when preparing for a left turn at an intersection or into a private road or roadway;

(3) when reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes that make it unsafe to continue along the right-hand curb or edge. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and vehicle to travel safely side by side within the lane;

(4) when operating a bicycle or a moped upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.(*).

B. Persons riding bicycles upon a street shall not ride more than two abreast except on paths or parts of streets set aside for the exclusive use of bicycles.

24-12-8-6. - CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebar. (66-3-706 NMSA 1978)

24-12-8-7. - LAMPS AND OTHER EQUIPMENT ON BICYCLES.

A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the division which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

B. No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet, except that a bicycle shall not be equipped with, nor shall any person use upon a bicycle any siren or whistle.

C. Every bicycle shall be equipped with a brake which will enable the operator to make the brake wheels skid on dry, level, clean pavement. (66-3-707 NMSA 1978)

24-12-8-8. - OBEDIENCE TO TRAFFIC-CONTROL DEVICES.

A. Any person operating a bicycle shall obey the instructions of official traffic-control devices applicable to vehicles, unless otherwise directed by a police officer.

B. Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event the person shall then obey the regulations applicable to pedestrians. (*)

24-12-8-9. - PARKING.

No person shall park a bicycle upon a street other than upon the street against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic. (*)

24-12-8-10. - SPEED.

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (*)

24-12-8-11. - EMERGING FROM ALLEY, DRIVEWAY, PRIVATE ROAD OR BUILDING.

A. The operator of a bicycle emerging from an alley, private road, driveway or building shall yield the right of way to all pedestrians on the sidewalk or sidewalk area.

B. Upon entering the street, the driver of a bicycle shall yield the right of way to all vehicles approaching on the street.(*)

24-12-8-12 RIDING ON SIDEWALKS.

A. No person shall ride a bicycle upon a sidewalk within a business district.

B. No person shall ride a bicycle on any sidewalk or street when signs are posted prohibiting bicycles on the sidewalk or street.

C. When signs are posted requiring bicycles to use sidewalks or paths adjacent to a street, no person shall ride a bicycle on the street adjacent to the sidewalks or paths.

D. Whenever any person is riding a bicycle upon a sidewalk, the person shall yield the right way to any pedestrian and shall give audible signal before overtaking and passing a pedestrian.(*)

24-12-8-13. – NOT ADOPTED – Per Ordinance 1364

24-12-8-14. – NOT ADOPTED – Per Ordinance 1364

24-12-8-15. – NOT ADOPTED – Per Ordinance 1364

24-12-8-16. – NOT ADOPTED – Per Ordinance 1364

24-12-8-17. – NOT ADOPTED – Per Ordinance 1364

24-12-8-18. – NOT ADOPTED – Per Ordinance 1364

24-12-8-20. – NOT ADOPTED – Per Ordinance 1364

24-12-8-21. – NOT ADOPTED – Per Ordinance 1364

24-12-8-22. – NOT ADOPTED – Per Ordinance 1364

24-12-8-23. – NOT ADOPTED – Per Ordinance 1364

ARTICLE NINE

24-12-9-1. - AUTHORITY TO ESTABLISH PARKING METER ZONES.

A. The administrator may establish parking meter zones in which the parking of vehicles upon streets or parts of streets shall be regulated by parking meters between the hours of 8:00 a.m. and 6:00 p.m. of any day except Sunday and public holidays.

B. The administrator may limit the period of time for which parking is lawfully permitted in any parking meter zone in which meters are located regardless of the number of coins deposited in a meter.

C. The parking meter zone may be diminished or extended and enlarged, or other parking meter zones may be created.(*)

24-12-9-2 INSTALLATION OF PARKING METERS.

A. The administrator shall install parking meters in established parking meter zones.

B. Parking meters shall be placed on the curb immediately adjacent to each designated parking space.

C. Parking meters shall be capable of being operated, either automatically or mechanically, upon the deposit therein of a twenty-five cent coin, ten-cent coin, five-cent coin or one penny coin of United States currency as provided in this ordinance.

D. Each parking meter shall be designed, constructed, installed and set so that an appropriate signal will indicate expiration of the lawful parking meter period which was registered by the deposit of one or more coins as provided herein.

E. During the lawful parking meter period registered by the deposit of a coin or coins and prior to the expiration of the lawful parking meter period, the meter shall indicate the interval of time which remains of such period.

F. Each parking meter shall bear a legend indicating the days and hours when the requirement to deposit coins shall apply, the value of the coins to be deposited and the limited period of time for which parking is lawfully permitted in the parking meter zone in which such meter is located.(*)

24-12-9-3. - PARKING METER SPACES.

A. The administrator shall designate the parking space adjacent to each parking meter for which the meter is to be used by appropriate markings upon the curb or the pavement of the street or both.

B. Designated parking meter spaces shall be of appropriate length and width so as to be accessible from the traffic lanes of the street.

C. No person shall park a vehicle in any designated parking meter space during the restricted or regulated time applicable to the parking meter zone in which the meter is located so that any part of the vehicle occupies more than one space or protrudes beyond the markings designating the space. However, a vehicle which is of a size too large to be parked within a single designated parking meter zone shall be permitted to occupy two adjoining parking meter spaces when coins of the appropriate denominations have been deposited in the parking meter for each space so occupied.(*)

24-12-9-4. - PARKING TIME LIMITS.

Parking or standing a vehicle in a designated space in parking meter zones shall be lawful upon the deposit of legal coins as indicated on each parking meter.(*)

24-12-9-5. - DEPOSIT OF COINS.

A. No person shall park a vehicle in any parking space regulated by a parking meter between the hours 8:00 a.m. and 6:00 p.m. on any day except Sundays and public holidays unless a coin or coins of the appropriate denomination as provided in this ordinance have been deposited therein and the meter has been placed in operation.

B. No person shall permit a vehicle within his control to be parked in any space regulated by a parking meter between the hours of 8 a.m. and 6 p.m. on any day except Sundays and public holidays while the parking meter for the space indicates by signal that the lawful parking time in the space has expired. This provision does not apply to the act of parking or the necessary time which is required to deposit immediately thereafter a coin or coins in the meter.

C. No person shall park a vehicle in any parking meter space for a consecutive period of time longer than the limited period of time for which parking is lawfully permitted in the parking meter zone in which the meter is located, irrespective of the number or amounts of coins deposited in the meter.

D. Failure to deposit proper coin or coins constitutes a violation of this ordinance.

E. Upon expiration of the legal parking time, it is the duty of the owner or driver of the vehicle to remove the vehicle from the parking space.

F. It is unlawful for any person to cause, allow, permit or suffer a vehicle registered in his name to be parked or to stand overtime or remain in the parking space beyond the specified parking time limit.

G. The provisions of this section shall not apply in a period of emergency determined by an officer of the fire department or the police department or in compliance with the directions of a police officer or traffic-control device.

H. The provisions of this section shall not relieve any person from the duty to observe other and more restrictive provisions of this ordinance prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.(*)

24-12-9-6. - USE OF SLUGS PROHIBITED.

No person shall deposit or attempt to deposit in any parking meter any slug, button or any other device or substance as substitutes for coins of United States currency.(*)

24-12-9-7. - TAMPERING WITH METER.

No person shall deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter.(*)

24-12-9-8. - PRESUMPTION OF UNLAWFUL PARKING.

A. When the "violation" indicator is showing on a parking meter to indicate the expiration of the lawful parking meter period for which coins have been deposited, it shall be presumptive evidence that any vehicle found in a regulated parking space is parked in violation.

B. It is unlawful and an offense for any person to deposit or cause to be deposited in a parking meter covering a metered parking stall which he has already occupied for the meter specified time limit any coins for the purpose of extending parking time beyond the total lawful parking period designated for the parking meter zone in which the meter is located.(*)

24-12-9-9. - PARKING IN DESIGNATED DISABLED PARKING SPACES.

A. It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 in a designated accessible parking space for persons with significant mobility limitation or in such a manner as to block access to any part of a curb cut designed for access by persons with significant mobility limitations. Any person who violates this section shall be subject to a fine of not less than two hundred fifty dollars (\$250) or more than five hundred dollars (\$500). Failure to properly display a parking placard or special registration plate issued pursuant to Section 66-3-16 NMSA 1978 is not a defense against a charge of violation of Subsection A of this section. (66-7-352.5 NMSA 1978)

B. As used in this section, "designated disabled parking space" means any space, including an access aisle, marked and reserved for the parking of a passenger vehicle that carries registration plates or a parking placard indicating disability in accordance with Section 66-3-16 NMSA 1978, and designated by a conspicuously posted sign bearing the

international disabled symbol of a wheelchair and if paved, by a clearly visible depiction of this symbol painted in blue on the pavement of the space. "Curb cut" means a short ramp through a curb or built up to the curb designed for access by the handicapped.

C. A vehicle parked in violation of Subsection A of this section is subject to being towed at the expense of the vehicle owner upon authorization by law enforcement personnel or by the property owner or manager of a parking lot. (66-1-4.4E and 66-7-352.5 NMSA 1978).

D. State, county and municipal law enforcement personnel may issue citations for violations of §12-9-9 in their respective jurisdictions, whether the violation occurs on public property or private property. (*)

E. Parking enforcement personnel of each of the state educational institutions designated in Article 12, Section 11 of the Constitution of New Mexico may issue citations for violations of Subsection A of this section within the exterior boundaries of lands under the control of their respective institutions, except portions of those lands that are public highways or streets. (66-7-352.6 NMSA 1987).

F. A law enforcement officer may issue a citation or authorize towing of a vehicle for a violation of Section A of this section regardless of the presence of the driver (66-7-352.5 NMSA 1978).

24-12-9-10. - PARKING LOTS – STANDARDS

A. Every parking lot coming under the provisions of the Accessible Parking Standards and Enforcement Act (66-7-352.1 NMSA 1978) shall have designated and maintained accessible parking spaces for persons with significant mobility limitation as provided in Subsection B of this section. No building permit shall be issued by any local government for the construction or substantial renovation of a commercial building inviting public access unless the parking lot has designated accessible parking spaces for persons with significant mobility limitation as delineated in Subsection B of this section.

B. The minimum number of designated accessible parking spaces for persons with significant mobility limitation are as follows:

TOTAL PARKING SPACES IN LOT	REQUIRED MINIMUM NUMBER OF PARKING SPACES FOR PERSONS WITH SIGNIFICANT MOBILITY LIMITATIONS
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1 to 25	1
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26 to 35	2
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36 to 50	3
51 to 100	4
101 to 300	8
301 to 500	12
501 to 800	16
801 to 1,000	20
More than 1,000	20, plus 1 for each 100 over 1,000.

The designated accessible parking spaces for persons with significant mobility limitation shall be located so as to provide the most convenient access to entranceways or to the nearest curb cut. Every parking lot shall have at least one designated accessible parking space for persons with significant mobility limitation designed to accommodate a motor vehicle passenger van, and there shall be a minimum of one such space for every eight designated accessible parking spaces for persons with significant mobility limitations.

C. A sign or other designation posted after July 1, 2010 at an accessible parking space pursuant to this section shall include the language “Violators are subject to a fine and/or towing.” (66-7-352.4 NMSA 1978)

ARTICLE TEN

24-12-10-1. - EQUIPMENT.

24-12-10-1.1. - PROHIBITED ACTS.

A. Except as otherwise provided in this section, it is a misdemeanor for any person to drive or move, or for the owner to cause or permit to be driven or moved, on any street, any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, or which does not contain those parts, or is not at all times equipped with such lamps and other equipment, in proper condition and adjustment, as is required by Sections 12-10-1.1 through 12-10-1.51, or which is equipped in any manner that is in violation of those sections, or for any person to do any act forbidden, or fail to perform any act required under those sections.

B. Nothing contained in Sections 12-10-1.1 through 12-10-1.51 shall be construed to prohibit the use of additional parts and accessories on any vehicle which are not inconsistent with the provisions of such sections.

C. The provisions of Sections 12-10-1.1 through 12-10-1.51, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as made applicable in those sections. (66-3-801 NMSA 1978)

24-12-10-1.2. - VEHICLES TO BE IN SAFE CONDITION.

A. No person shall drive or move on any street any motor vehicle, trailer, semi-trailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this ordinance, and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the street. (66-3-901 NMSA 1978)

B. Any police officer may at any time when having reasonable cause to believe that any vehicle is unsafe, or not equipped as required by this ordinance, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to inspection and tests as may be appropriate and reasonable.(*)

24-12-10-1.3. - WHEN LIGHTED LAMPS ARE REQUIRED.

Every vehicle upon a street within this municipality at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated. (66-3-802 NMSA 1978)

24-12-10-1.4. - VISIBILITY DISTANCE AND MOUNTED HEIGHT OF LAMPS.

A. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in Section 12-10-1.3 in respect to a vehicle without load when upon a straight, level, unlighted street under normal atmospheric conditions unless a different time or condition is expressly stated.

B. Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load. (66-3-803 NMSA 1978)

12-10-1.5 HEAD LAMPS ON MOTOR VEHICLES.

A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps with at least one on each side of the front of the

motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this ordinance.

B. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this ordinance.

C. Every headlamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four inches nor less than twenty inches to be measured as set forth in Section 12-10-1.4B. The provisions of this paragraph shall apply only to new motor vehicles sold after July 1, 1953. (66-3-804 NMSA 1978)

D. For the purposes of Sections 12-10-1.1 through 12-10-1.5 parking lamps shall not be used in lieu of head lamps.(*).

E. No headlight shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)

24-12-10-1.6. - DIMMING OF LIGHTS.

A. Whenever a motor vehicle meets another motor vehicle on any street during nighttime when headlights are in use, the driver of the vehicle shall, when within 500 feet of the other vehicle, dim or tilt the beams of the headlights downward.

B. The driver of any motor vehicle in any business district at nighttime when headlights are required shall keep headlights dimmed.

C. Whenever the driver of a motor vehicle overtakes another vehicle proceeding in the same direction or follows another vehicle proceeding in the same direction or follows another vehicle proceeding in the same direction within 200 feet at nighttime when headlights are required, the driver shall dim or tilt the beam of the headlights downward.(*).

24-12-10-1.7. - TAIL LAMPS.

A. Every motor vehicle, trailer, semi-trailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear; provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after July 1, 1953, shall be equipped with at least two tail lamps mounted on the rear, which when lighted as herein required shall comply with the provisions of this section.

B. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than twenty inches.

C. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. (66-3-805 NMSA 1978)

D. No tail lamp shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)

24-12-10-1.8. - VEHICLES TO BE EQUIPPED WITH REFLECTORS.

A. Every new motor vehicle hereafter sold and operated upon a street, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one reflector, meeting the requirements of this section.

B. Every such reflector shall be mounted on the vehicle at a height not less than twenty inches nor more than sixty inches measured as set forth in Section 12-10-1.4B, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle when directly in front of lawful upper beams of headlamps. (66-3-806 NMSA 1978)

24-12-10-1.9. - STOP LAMPS, SIGNAL LAMPS AND SIGNAL DEVICES.

A. From and after January 1, 1954, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in this municipality or for any person to drive such vehicle on the streets unless it is equipped with at least one stop lamp meeting the requirements of Subsection C(1).

B. No person shall sell or offer for sale or operate on the streets any motor vehicle, trailer, semi-trailer or house trailer registered in this state which was manufactured or assembled after January 1, 1954, unless it is equipped with mechanical or electric turn signals meeting the requirements of Subsection C(2). This subsection shall not apply to any motorcycle or motor-driven cycle. (66-3-807 NMSA 1978)

C. Any motor vehicle, trailer, semi-trailer and house trailer may be equipped and when required under this ordinance shall be equipped with the following stop lamps, signal lamps, or signal devices:

- (1) stop lamp or stop lamps on the rear which shall emit a red, amber or yellow light and which shall be actuated upon application of the service brakes

and which may but need not be incorporated with one or more other rear lamps;
and

(2) lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

D. Every stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

E. All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 12-10-1.3 of this ordinance. (66-3-828 NMSA 1978)

24-12-10-1.10. - MUFFLERS--PREVENTION OF NOISE--EMISSION CONTROL DEVICES.

A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a street in this municipality.

B. The muffler, emission control equipment or device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

C. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory-installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution. (66-3-844 NMSA 1978)

24-12-10-1.11. - LAMP OR FLAG ON PROJECTING LOAD.

A. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 12-10-1.3 hereof, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such

load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

B. If any part of a vehicle, or any load thereon, or any mechanical device, whether a temporary or permanent part of the vehicle, extends beyond the front bumpers thereof the extreme front corners of such projection shall at the times specified in Section 12-10-1.3 be indicated by amber lights or lanterns visible from a distance of at least five hundred feet to the sides and front. (66-3-824 NMSA 1978)

24-12-10-1.12. - WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; WINDOWS MUST BE TRANSPARENT; EXCEPTIONS.

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rear-most window if the latter is used for driving visibility except as provided in Section 12-10-1.12A. The rear-most window is not necessary for driving visibility where outside rear-view mirrors are attached to the vehicle.

B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

C. Every windshield wiper upon a motor vehicle shall be maintained in good working order. (66-3-846 NMSA 1978)

24-12-10-1.12A. - SUN SCREENING MATERIAL ON WINDSHIELDS AND WINDOWS; REQUIREMENTS; VIOLATION; PENALTY.

A. A person shall not operate on any street or highway a motor vehicle that is registered or required to be registered in this state if that motor vehicle has a sun screening material on the windshield or any window that does not comply with the requirements of this section.

B. Except as otherwise provided in this section, a sun screening material:

(1) when used in conjunction with the windshield, shall be nonreflective, shall not be red, yellow or amber in color and shall be used only along the top of the windshield, not extending downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield; and

(2) when used in conjunction with the safety glazing materials of the side wings or the side windows located at the immediate right and left of the driver, the side windows behind the driver and the rearmost window shall be

nonreflective, shall have a light transmission of not less than twenty percent and shall be used only on the windows of a motor vehicle equipped with one right and one left outside rearview mirror.

C. Each manufacturer shall:

(1) certify to the division that a sun screening material used by that manufacturer is in compliance with the nonreflectivity and light transmission requirements of this section;

(2) provide a label not to exceed one and one-half square inches in size that:

(a) is installed permanently and legibly between the sun screening material and each glazing surface to which it is applied;

(b) contains the manufacturer's name, the date the sun screening material was manufactured and the percentage of light transmission; and

(c) is placed in the left lower corner of each glazing surface when facing the motor vehicle from the outside; and

(3) include instructions with the sun screening material for proper installation, including the affixing of the label specified in this subsection.

D. No person shall:

(1) offer for sale or for use any sun screening material for motor vehicle use not in compliance with this section; or

(2) install any sun screening material on motor vehicles intended for operation on any street or highway without permanently affixing the label specified in subsection C of this section.

E. The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material that is in violation of this section. The affidavit shall be in the possession of the person with such a physical condition, or the person's legal guardian, at all times while being transported in the motor vehicle.

F. The light transmission requirement of this section does not apply to windows behind the driver on truck tractors, buses, recreational vehicles, multipurpose passenger vehicles and motor homes. The provisions of this section shall not apply to motor vehicle glazing which complies with federal motor vehicle standards.

G. The provisions of this section do not apply to motor vehicles that have sun screening material on the windshield or any window prior to 1997.

H. As used in this section:

(1) “light transmission” means the ratio of the amount of total light that passes through a product or material, expressed in percentages, to the amount of total light falling on the product or material;

(2) “manufacturer” means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with motor vehicle glazing materials for the purpose of reducing the effects of the sun;

(3) “nonreflective” means designed to absorb light rather than to reflect it; and

(4) sun screening material means any film material, substance, device or product that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

I. Any person who violates any provision of this section is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than seventy-five dollars (\$75.00). (66-3-846.1 NMSA 1978)

24-12-10-1.13. - PROHIBITING LUGS.

No person shall drive a tractor engine, tractor or vehicle with lugs on the wheels thereof over any paved street.(*)

24-12-10-1.14. - PERMISSION TO USE EMERGENCY EQUIPMENT ON OTHER THAN OFFICIAL VEHICLES.

No person shall operate a vehicle other than an official vehicle, equipped with any red lights mounted so as to project a beam in a forward direction, or a siren, unless written permission of the chief of police or his designated representative is first obtained.(*)

24-12-10-1.15. - PROHIBITING METAL TIRES OR DRAGGING LOAD.

A. When the use thereof is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one-inch thick above the edge of the flange of the entire periphery.

B. No person shall operate or move on any street any motor vehicle, trailer, or semi-trailer having any metal tire in contact with the street, except that for the purposes of this

ordinance a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

C. No tire on a vehicle moved on a street shall have on its periphery any block, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street, and except also that it shall be permissible to use tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

D. The administrator may, in his discretion, issue special permits authorizing the operation upon a street of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a street would otherwise be prohibited under the provisions of this ordinance.

E. No vehicle equipped with solid rubber or cushion tires shall be permitted upon any street of this municipality without special permission first being granted by the administrator, and in no event may any such vehicle be operated at a speed in excess of that specified by law. (66-3-847 NMSA 1978)

F. No person shall operate or move on any street any motor vehicle, trailer or semi-trailer from which any object or load scrapes along or over any paved surface.(*).

24-12-10-1.16. - BRAKES.

A. Brake equipment is required as follows:

(1) every motor vehicle, other than a motorcycle, when operated upon a street shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels;

(2) every motorcycle when operated upon a street, shall be equipped with at least two brakes which may be operated by hand or foot;

(3) every bus, truck, truck tractor, road tractor, trailer and semi-trailer, and pole trailer shall be equipped with brakes on all wheels in contact with road surfaces except:

(a) trailers, semi-trailers and pole trailers of a gross weight of less than three thousand pounds;

(b) any vehicle being towed in a driveaway-towaway operation; provided, the combination of vehicles is capable of complying with the performance requirements of Subsection B of this section;

(c) trucks, truck tractors and road tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles the wheels of one such axle need not be equipped with brakes;

(d) house-moving dollies subject to regulations adopted by the secretary of transportation under the Motor Transportation Act; and

(e) motor vehicles of the types named in this section hereinabove, heretofore manufactured prior to July 1, 1963;

(4) every house trailer of a gross weight in excess of three thousand pounds, registered in the state, shall be equipped with brakes on at least two wheels in contact with road surfaces. Every house trailer of a gross weight of three thousand pounds or more, when operated upon a highway or street, shall be equipped with brakes adequate to control the movement of, and to stop and to hold, such vehicle, and so designed as to be applied by the driver of the towing motor vehicle;

(5) every bus, truck, road tractor or truck tractor shall be equipped with parking brakes capable of locking the rear driving wheels and adequate under any condition of loading to hold, to the limit of traction of such braked wheels, such vehicle or combination of vehicles to which such motor vehicle may be attached. The operating controls of such parking brakes shall be independent of the operating controls of the service brakes;

(6) in any combination of motor-drawn vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed; and

(7) the brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

B. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road, free from loose material, upon application of the service brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in ft. per second
Vehicles or combinations of		
vehicles having brakes on all wheels . .	30	14
Vehicles or combinations of		
vehicles not having brakes on all wheels . .	40	10.7

C. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. (66-3-840 NMSA 1978)

24-12-10-1.17. - HORNS AND WARNING DEVICES.

A. Every motor vehicle when operated upon a street shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall be used which does not produce a harmonious sound. The driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a street.

B. No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell except as otherwise permitted in this section.

C. It is permissible, but not required, that any commercial vehicle be equipped with a theft-alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

D. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the division, but such siren shall not be

used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof. (66-3-843 NMSA 1978)

24-12-10-1.18. - MIRRORS.

Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. (66-3-845 NMSA 1978)

24-12-10-1.19. - APPLICATION OF SUCCEEDING SECTIONS.

Sections 24-12-10-1.20, 24-12-10-1.21, 24-12-10-1.27, 24-12-10-1.33 and 24-12-10-1.34 shall apply in lieu of Sections 24-12-10-1.5A,B,C, 24-12-10-1.7A,B,C and 24-12-10-1.8 as to passenger buses, trucks, truck tractors, road tractors, and such trailers, semi-trailers and pole trailers provided for therein, when operated upon any street, and said vehicles shall be equipped as required. All lamp equipment required shall be lighted at the times mentioned in Section 12-10-1.3 of this ordinance. (66-3-808 NMSA 1978)

24-12-10-1.20. - ADDITIONAL EQUIPMENT REQUIRED.

Every bus or truck less than eighty inches in over-all width shall be equipped as follows:

- (1) on the front: two headlamps; and
- (2) on the rear: one red tail lamp; one red or amber stop lamp; two red reflectors, one at each side. (66-3-809 NMSA 1978)

24-12-10-1.21. - COLOR OF CLEARANCE LAMPS, SIDE-MARKER LAMPS AND REFLECTORS.

Every bus or truck eighty inches or more in over-all width shall be equipped as follows:

- (1) on the front: two headlamps; two amber clearance lamps, one at each side;
- (2) on the rear: one red tail lamp; one red or amber stop lamp; two red clearance lamps, one at each side; two red reflectors, one at each side.
- (3) all lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber; and

(4) on each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear. (66-3-810 NMSA 1978)

24-12-10-1.22. - LAMPS AND REFLECTORS--TRUCK TRACTORS AND ROAD TRACTORS.

Every truck tractor and road tractor shall be equipped as follows:

(1) on the front: two headlamps; two amber clearance lamps, one at each side; and

(2) on the rear: one red tail lamp; one red or amber stop lamp. (66-3-811 NMSA 1978)

24-12-10-1.23. - LAMPS AND REFLECTORS--LARGE SEMI-TRAILERS, FULL TRAILERS AND HOUSE TRAILERS.

A. Every semi-trailer, full trailer or house trailer eighty inches or more in over-all width shall be equipped as follows:

(1) on the front: two amber clearance lamps; one at each side;

(2) on the rear: one red tail lamp; one red or amber stop lamp; two red clearance lamps, one at each side; two red reflectors, one at each side; and

(3) on each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

B. Side-marker lamps may be in combination with clearance lamps and may use the same light source. (66-3-812 NMSA 1978)

24-12-10-1.24. - LAMPS AND REFLECTORS--SMALL SEMI-TRAILERS, HOUSE TRAILERS AND TRAILERS.

Every semi-trailer, house trailer or trailer less than eighty inches in over-all width shall be equipped as follows: on the rear: one red tail lamp; two red reflectors, one at each side; one red or amber stop lamp, if the semi-trailer, house trailer or trailer obscures the stop lamp on the towing vehicle. (66-3-813 NMSA 1978)

24-12-10-1.25. - LAMPS AND REFLECTORS--POLE TRAILERS.

Every pole trailer shall be equipped as follows:

(1) on the rear: one red tail lamp, two red reflectors, one at each side, placed to indicate extreme width of the pole trailer; and

(2) on each side, on the rearmost support for the load: one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers thirty feet or more in over-all length, an amber marker lamp on each side near the center. (66-3-814 NMSA 1978)

24-12-10-1.26. - LAMPS AND REFLECTORS--COMBINATIONS IN DRIVEAWAY-TOWAWAY OPERATIONS.

Combinations of motor vehicles, as enumerated in Section 12-10-1.19 of this ordinance, engaged in driveaway-towaway operations shall be equipped as follows:

A. On towing vehicle;

(1) on the front, two head lamps and two amber clearance lamps, one at each side;

(2) on each side and near the front, one amber side-marker lamp;

(3) on the rear, one red tail lamp; one red or amber stop lamp; and

(4) provided, however, that vehicles of less than eighty inches in width shall be equipped as provided in Section 12-10-1.20 of this ordinance.

B. On the towed vehicles of a tow-bar combination, the towed vehicle of a single saddle-mount combination and on the rearmost towed vehicle of a double saddle-mount combination:

(1) on each side, and near the rear, one red side-marker lamp; and

(2) on the rear, one red tail lamp; two red clearance lamps, one at each side; one red or amber stop lamp; two red reflectors, one at each side.

C. On the first saddle-mount of a double saddle-mount combination: one each side and near the rear, one amber side-marker lamp.

D. Combinations of vehicles less than eighty inches in width in driveaway-towaway operations shall carry lamp and reflectors as required in Section 12-10-1.20 of this ordinance. (66-3-815 NMSA 1978)

24-12-10-1.27. - MOUNTING OF REFLECTORS, CLEARANCE LAMPS AND SIDE-MARKER LAMPS.

A. Reflectors required by Section 12-10-1.20 and 12-10-1.21 of this ordinance shall be mounted upon the motor vehicle at a height of not less than twenty-four inches nor more than sixty inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the twenty-four-inch requirements impractical. They shall be so installed as to perform their function adequately and reliably and, except for temporary reflectors required for vehicles in driveway-towaway operations, all reflectors shall be permanently and securely mounted in workmanlike manner so as to provide the maximum of stability, and the minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed with flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors mounted on motor vehicles during the time they are in transit in any driveway-towaway operations must be firmly attached.

B. All reflectors on the rear and those nearest to the rear on the sides, except those referred to in Subsection C of this section, shall reflect a red color; all other reflectors, except those referred to in Subsection C of this section, shall reflect an amber color; provided that this requirement shall not be construed to prohibit the use of motor vehicles in combination if such motor vehicles are severally equipped with reflectors as required by Section 12-10-1.20 through 12-10-1.26 of this ordinance.

C. Retroreflective surface, other than required reflectors, may be used, provided:

- (1) designs do not resemble traffic control signs, lights or devices, except that straight edge striping resembling a barricade pattern may be used;
- (2) designs do not tend to distort the length or width of the motor vehicle;
- (3) such surfaces shall be at least three inches from any required lamp or reflector unless of the same color as such lamp or reflector;
- (4) no red color shall be used on the front of any motor vehicle; and
- (5) no provision of this subsection shall be so construed as to prohibit the use of retroreflective registration plates required by any state or local authorities. (66-3-816 NMSA 1978)

24-12-10-1.28. - CLEARANCE LAMPS TO INDICATE EXTREME WIDTH, HEIGHT AND LENGTH.

Clearance lamps shall, so far as is practicable, be mounted as to indicate the extreme width, height and length of the motor vehicle; except that clearance lamps on truck-tractors shall be so located as to indicate the extreme width of the truck-tractor cab. (66-3-817 NMSA 1978)

24-12-10-1.29. - SIDE-MARKER LAMPS COMBINED WITH CLEARANCE LAMPS.

Side-marker lamps may be combined with clearance lamps and may use the same light source. (66-3-818 NMSA 1978)

24-12-10-1.30. - COMBINATION TAIL AND STOP LAMPS.

Except as required by 24-12-10-1.29 of this ordinance tail lamps may be incorporated in the same housing with stop lamps so long as the requirements for each are fulfilled. (66-3-819 NMSA 1978)

24-12-10-1.31. - LIGHTING DEVICES TO BE ELECTRIC. Lighting devices shall be electric, except that red liquid burning lanterns may be used on the end of load in the nature of poles, pipes, and ladders projecting to the rear of the vehicle. (66-3-820 NMSA 1978)

24-12-10-1.32. - REQUIREMENTS FOR HEADLAMPS AND AUXILIARY ROADLIGHTING LAMPS.

A. Headlamps and lamps or auxiliary road lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally, and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.

B. Every bus, truck or truck-tractor shall be equipped with two single-beam headlamps supplemented by two auxiliary single-beam headlamps furnishing, respectively, an upper and lower distribution of light, also selectable at the driver's will.

C. Headlamps shall be constructed and installed so as to comply with the provisions of Sections 12-10-1.39 through 12-10-1.41 of this ordinance. (66-3-821 NMSA 1978)

24-12-10-1.33. - REQUIREMENTS FOR CLEARANCE, SIDE-MARKER AND OTHER LAMPS.

A. Except for temporary side-marker and clearance lamps on motor vehicles, as enumerated in Section 66-3-808 NMSA 1978, being transported in driveaway-towaway operations, temporary electric lamps on projecting loads, and temporary marker lamps on pole trailers, all lamps shall be permanently and securely mounted in workmanlike manner on a permanent part of the motor vehicle. All clearance lamps and side-marker lamps must be firmly attached.

B. Clearance, side-marker, tail and projecting load-marker lamps shall be so mounted as to be capable of being seen from a distance of at least five hundred feet under clear atmospheric conditions during the time lamps are required to be lighted. The light from front clearance lamps shall be visible to the front and that from side-marker lamps

to the side, that from rear clearance and tail lamps to the rear. This section shall not be construed to apply to lamps which are obscured by another unit or a combination of vehicles.

C. Clearance, side-marker, tail and projecting load-marker lamps shall be constructed and installed so as to provide an adequate and reliable warning signal. (66-3-822 NMSA 1978)

24-12-10-1.34. - OBSTRUCTED LIGHTS NOT REQUIRED.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp, except tail lamps, need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination; but, this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted. (66-3-823 NMSA 1978)

24-12-10-1.35. - LAMPS ON PARKED VEHICLES.

A. Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half-hour after sunset and half-hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway no lights need to be displayed upon such parked vehicle.

B. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: at least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and same lamp or at least one other lamp shall display a red light visible, from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

C. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed. (66-3-825 NMSA 1978)

24-12-10-1.36. - LAMPS ON OTHER VEHICLES AND EQUIPMENT.

A. All vehicles, including animal-drawn vehicles, not specifically required by the provisions of this ordinance to be equipped with lamps, shall at the time specified in 12-10-1.3 of this ordinance hereof be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

B. Every farm tractor not equipped with an electric lighting system shall at all times mentioned in Section 12-10-1.3 of this ordinance be equipped with lamps or lanterns meeting the requirements of Subsection A above. Every farm tractor equipped with an electric lighting system shall at all times mentioned in Section 12-10-1.3 of this ordinance display a red tail lamp and either multiple-beam or single-beam headlamps meeting the requirements of Sections 12-10-1.7, 12-10-1.39 and 12-10-1.41 of this ordinance.

C. All combinations of tractors and towed farm equipment shall, in addition to the lighting equipment required by Subsection B above, be equipped with a lamp or lamps displaying a white or amber light visible from a distance of five hundred feet to the front and red light visible from a distance of five hundred feet to the rear, and said lamp or lamps shall be installed or capable of being positioned so that visibility from the rear is not obstructed by the towed equipment and so as to indicate the furthest projection of said towed equipment on the side of the road used by other vehicles in passing such combinations. And further, all such towed farm equipment shall be equipped either with two tail lamps displaying a red light visible from a distance of the five hundred feet to the rear or two red reflectors visible from a distance of fifty to five hundred feet to the rear when illuminated by the upper beam of headlamps, and the location of such lamps or reflectors shall be such as to indicate as nearly as practicable the extreme left and right rear projections of said towed equipment on the street. (66-3-826 NMSA 1978)

24-12-10-1.37. - SPOT LAMPS AND AUXILIARY LAMPS.

A. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle; provided, however, that lighted spot lamps shall be turned off at least five hundred feet from approaching motor vehicles.

B. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed, when the vehicle is not loaded, that none of the high-intensity portion of the light to the left of the center of the vehicle shall, at a distance of twenty-five feet ahead, project higher than a level of four inches

below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in Section 12-10-1.39B of this ordinance.

C. Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of Section 12-10-1.39 of this ordinance shall apply to any combination of headlamps and auxiliary passing lamps.

D. Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands. Any lighted auxiliary driving lamp shall be turned off at least five hundred feet from approaching motor vehicles. The provisions of Section 12-10-1.39 of this ordinance shall apply to any combination of headlamps and auxiliary driving lamp. (66-3-827 NMSA 1978)

24-12-10-1.38. - ADDITIONAL LIGHTING EQUIPMENT.

A. Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

B. Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

C. Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. (66-3-829 NMSA 1978)

24-12-10-1.39. - MULTIPLE BEAM ROAD LIGHTING EQUIPMENT.

Except as hereinafter provided, the headlamps or the auxiliary driving lamps or the auxiliary passing lamp, or combinations thereof, on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

A. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions of loading.

B. There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred

feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

C. Every new motor vehicle registered in this state after July 1, 1953, which has multiple beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (66-3-830 NMSA 1978)

24-12-10-1.40 USE OF MULTIPLE BEAM ROAD LIGHTING EQUIPMENT. Whenever a motor vehicle is being operated on a street or shoulder adjacent thereto during the times specified in Section 12-10-1.3 of this ordinance, the driver shall use all distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at safe distance in advance of the vehicle, subject to the following requirements and limitations:

A. Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

B. The lowermost distribution of light specified in Section 12-10-1.39B of this ordinance shall be deemed to avoid glare at all times, regardless of road contour and loading.

C. Whenever the driver of a vehicle overtakes another vehicle proceeding in the same direction and within two hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected through the rear window of the overtaken vehicle. (66-3-831 NMSA 1978)

24-12-10-1.41. - SINGLE BEAM ROAD LIGHTING EQUIPMENT.

Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1953, in lieu of multiple beam road lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

A. The headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level of which the vehicle stands at a distance of seventy-five feet ahead.

B. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet. (66-3-832 NMSA 1978)

24-12-10-1.42. - ALTERNATE ROAD LIGHTING EQUIPMENT.

Any motor vehicle may be operated under the conditions specified in Section 12-10-1.3 of this ordinance when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in Sections 12-10-1.39 or 12-10-1.41 of this ordinance; provided, however, that at no time shall it be operated at a speed in excess of twenty miles an hour. (66-3-833 NMSA 1978)

24-12-10-1.43. - NUMBER OF DRIVING LAMPS REQUIRED OR PERMITTED.

A. At all times specified in Section 12-10-1.3 of this ordinance, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

B. Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamp or spot lamps or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candle power, not more than a total of four or any such lamps on the front of a vehicle shall be lighted at any one time when upon a street. (66-3-834 NMSA 1978)

24-12-10-1.44. - SPECIAL RESTRICTIONS ON LAMPS.

A. Lighted lamps or illuminating devices upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, that project a beam of light of an intensity greater than three hundred candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the street on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

B. A person shall drive or move upon a highway a vehicle or equipment with a lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment, except as expressly authorized or required by the New Mexico Motor Vehicle Code.

C. Flashing lights are prohibited except as provided in this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating turn.

D. A recovery or repair vehicle standing on a highway for the purpose of removing, and actually engaged in removing, a disabled vehicle, and while engaged in towing any disabled vehicle, may display flashing lights in any color except red. This provision shall not be construed as permitting the use of flashing lights by recovery or repair

vehicles in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses may display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the New Mexico Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible. (66-3-835 NMSA 1978)

24-12-10-1.44. - SPECIAL RESTRICTIONS ON LAMPS.

A. Lighted lamps or illuminating devices upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, which project a beam of light of an intensity greater than three hundred candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the street on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

B. No person shall drive or move upon any street, any vehicle or equipment with a lamp or device thereon displaying a red light visible from directly in front of the center of the vehicle or equipment. This section does not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by the New Mexico Motor Vehicle Code.

C. Flashing lights are prohibited except as provided in Subsection D of this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating turn.

D. Tow cars standing on streets for the purpose of removing, and actually engaged in removing, disabled vehicles, and while engaged in towing any disabled vehicle, may display flashing lights. This shall not be construed as permitting the use of flashing lights by tow cars in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses shall display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the New Mexico Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible. (66-3-835 NMSA 1978)

24-12-10-1.45. - LIGHTS ON SNOW REMOVAL EQUIPMENT.

It shall be unlawful to operate any snow removal equipment on any street unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted by the State Highway Commission as provided in Section 66-3-836 NMSA 1978. (66-3-836 NMSA 1978)

24-12-10-1.46. - MEANING OF THE TERM "MOTOR VEHICLE" AS USED IN SECTIONS 24-12-10-1.47 THROUGH 24-12-10-1.51 OF THIS ORDINANCE--UNATTENDED VEHICLES.

A. For the purposes of Sections 12-10-1.47 through 12-10-1.51 of this ordinance "motor vehicle" means every bus, truck tractor, road tractor,, and every driven vehicle in driveaway-towaway operations, required by Section 12-10-2 of this ordinance to have emergency equipment thereon.

B. No motor vehicle shall be left unattended until the parking brake has been securely set. All reasonable precautions shall be taken to prevent the movement of any vehicle left unattended. (66-3-851 NMSA 1978)

24-12-10-1.47. - STOPPED VEHICLES NOT TO INTERFERE WITH OTHER TRAFFIC.

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended, upon the traveled portion of any street outside of a business or residence district, when it is practicable to stop, park, or leave such vehicle off the traveled portions of the street. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the street, the driver shall make every effort to leave all possible width of the street opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear. (66-3-852 NMSA 1978)

24-12-10-1.48. - EMERGENCY SIGNALS--DISABLED VEHICLE.

Whenever any motor vehicle is disabled upon the traveled portion of any street or the shoulder thereof, when lighted lamps are required, except where there is sufficient street lighting to make it clearly discernible to persons and vehicles on the street at a distance of five hundred feet, the following requirements shall be observed:

A. The driver of such vehicle shall immediately place on the traveled portion of the street at the traffic side of the disabled vehicle, a lighted fuse and lighted red electric lantern, or a red emergency reflector.

B. Except as provided in Subsections C and D of this section, as soon thereafter as possible, but in any event within the burning period of the fuse, the driver shall place three liquid-burning flares or pot torches, or three red emergency reflectors on the traveled portion of the street in the following order:

(1) one at a distance of approximately one hundred feet from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane;

(2) one at a distance of approximately one hundred feet in the opposite direction from the disabled vehicle in the center of the traffic lane occupied by such vehicle; and

(3) one at the traffic side of the disabled vehicle, not less than ten feet to the front or rear thereof. If a red electric lantern or red emergency reflector has been placed on the traffic side of the vehicle in accordance with Subsection A of this section, it may be used for this purpose.

C. If disablement of any motor vehicle shall occur within five hundred feet of a curve, crest of a hill, or other obstruction to view, the driver shall so place the warning signal in that direction as to afford ample warning to other users of the street, but in no case less than one hundred feet nor more than five hundred feet from the disabled vehicle.

D. If gasoline or any other flammable or combustible liquid or gas seeps or leaks from a fuel container of a motor vehicle disabled or otherwise stopped upon a street, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion. (66-3-853 NMSA 1978)

24-12-10-1.49 NON-EMERGENCY SIGNALS--STOPPED OR PARKED VEHICLES.

Whenever for any cause other than disablement or necessary traffic stops, any motor vehicle is stopped upon the traveled portion of any street, or shoulder thereof, during the time lights are required, except where there is sufficient street lighting to make clearly discernible persons and vehicles on the street at a distance of five hundred feet, the following requirements shall be observed:

A. The driver of such vehicle shall immediately place on the traveled portion of the street at the traffic side of the vehicle, a lighted fuse and lighted red electric lantern, or a red emergency reflector.

B. If the stop is to exceed ten minutes, the driver shall place emergency signals as required and in the manner prescribed by Section 12-10-1.48 of this ordinance. (66-3-854 NMSA 1978)

24-12-10-1.50. - EMERGENCY SIGNALS--FLAME PRODUCING.

No driver shall attach or permit any person to attach a lighted fuse or other flame producing emergency signal to any part of a motor vehicle. (66-3-855 NMSA 1978)

24-12-10-1.51. - EMERGENCY SIGNALS--DANGEROUS CARGOES.

No driver shall use or permit the use of any flame producing emergency signal for protecting any motor vehicle transporting explosives, any cargo tank motor vehicle used for the transportation of any flammable liquid or flammable compressed gas, whether loaded or empty; or any motor vehicle using compressed gas as a motor fuel. In lieu thereof, red electric lanterns or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in Section 12-10-1.48 of this ordinance. (66-3-856 NMSA 1978)

24-12-10-2. - TRANSPORTING OR HANDLING EXPLOSIVES OR DANGEROUS ARTICLES.

A. Any person operating any vehicle transporting explosives or other dangerous articles, as defined in the New Mexico Motor Vehicle Code, as cargo upon a street shall comply with the provisions of Sections 66-3-858 through 66-3-873 NMSA 1978 with respect to marking of vehicles. (66-3-858 NMSA 1978)

B. No motor vehicle transporting any explosive or any other dangerous article shall be left unattended upon any street in any residence or business district except when the driver is engaged in the performance of normal operations incident to his duties as an operator of the vehicle to which he is assigned; provided, however, the chief of police may except any street in any business district from the operation of this subsection.

C. Drivers of motor vehicles transporting explosives, inflammable liquids, or inflammable, noxious or toxic compressed gasses in cargo tanks, shall avoid, so far as practicable, driving into or through congested streets, places where crowds are assembled and dangerous crossings. So far as practicable this shall be accomplished by prearrangement of routes.

D. No blasting caps or other materials designed and used for detonating charges or explosives may be transported in or on a vehicle with any explosive.(*)

E. The administrator shall enforce such rules and regulations adopted and promulgated by the director with respect to the transportation of compressed gasses and corrosive liquids by tank vehicle upon the public street. (66-3-873 NMSA 1978)

24-12-10-3. - REGULATING THE KINDS AND CLASSES OF TRAFFIC ON THE STREETS.

24-12-10-3.1. - RESTRICTIONS UPON USE OF STREETS BY CERTAIN VEHICLES.

A. The administrator may determine and designate those heavily traveled streets upon which shall be prohibited the use of the street by motor driven cycles, bicycles,

horse-drawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof.

B. When signs are erected giving notice of the restrictions, no person shall disobey the restrictions stated on the signs.(*)

24-12-10-3.2. - MINIMUM VEHICLE SIZE.

A. It is unlawful to operate on the streets of this municipality any motor vehicle:

(1) with a wheelbase, between two axles, of less than three feet seven inches; (66-7-405 NMSA 1978)

(2) any motorcycle with less than a twenty-five (25) inch seat height measured from the ground to the lowest point on top of the seat cushion, without a rider.(*)

B. For the purpose of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles. (66-7-405 NMSA 1978)

24-12-10-3.3. - PROJECTING LOADS ON PASSENGER VEHICLES.

No passenger-type vehicle, except a motorcycle, shall be operated on any street with any load carried thereon extending beyond the line of the fenders on the left side of the vehicle nor extending more than six (6) inches beyond the line of the fenders on the right side of the vehicle. (66-7-403 NMSA 1978)

24-12-10-3.4. - SPECIAL PROJECTING LOAD LIMITS.

The load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than seven feet beyond the rear of the bed or body of such vehicle. (66-7-406 NMSA 1978)

24-12-10-3.5. - TRAILERS AND TOWED VEHICLES.

A. When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby. When a combination of vehicles are engaged in transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axle of each vehicle insofar as possible.

B. When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square. (66-7-408 NMSA 1978)

24-12-10-3.6. - WIDTH OF VEHICLES.

A. The total outside width of any vehicle or its load, excepting mirrors, shall not exceed eight feet six inches. Safety devices up to three inches on either side of the vehicle are also excepted. (66-7-402 NMSA 1978)

24-12-10-3.7. - HEIGHT AND LENGTH OF VEHICLES AND LOADS.

A. No vehicle, shall exceed a height of fourteen feet.

B. No vehicle, shall exceed a length of forty feet extreme over-all dimension, exclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in this section. No combination of vehicles, unless otherwise exempted in this section, shall exceed an overall length of sixty-five feet, exclusive of front and rear bumpers.

C. No combination of vehicles coupled together shall consist of more than two units, except:

(1) a truck tractor and semi-trailer shall be permitted to pull one trailer;

(2) a vehicle shall be permitted to pull two units, provided that the middle unit is equipped with brakes and has a weight equal to or greater than the last unit and the total combined gross weight of the towed units does not exceed the manufacturer's stated gross weight of the towing units;

(3) a double or triple saddle-mount or fifth wheel mount of vehicles in transit by driveway-towaway methods shall be permitted;

(4) vehicles and trailers operated by or under contract for municipal refuse systems;

(5) farm trailers, implements of husbandry and fertilizer trailers operated by or under contract to a farmer or rancher in his farming or ranching operations; and

(6) as provided in Subsection D and E of this section.

D. Exclusive of safety and energy conservation devices, refrigeration units and other devices such as coupling devices, vehicles operating a truck tractor semitrailer or truck tractor semitrailer-trailer combinations on the interstate highway system and those qualifying federal aid primary system highways designated by the secretary of the United

States department of transportation, pursuant to the United States Surface Transportation Assistance Act of 1982, Public Law 97-424, Section 411, and on those highways designated by the department by rule or regulation with the concurrence of the state transportation department may exceed an overall length limitation of sixty-five feet, provided that the length of the semitrailer in a truck tractor semitrailer combination does not exceed fifty-seven feet six inches and the length of the semitrailer or trailer in a truck tractor semitrailer-trailer combination does not exceed twenty-eight six inches. The department shall adopt rules and regulations granting reasonable access to terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers to vehicles operating in combination pursuant to this subsection. As used in this subsection, "truck tractor" means a non-cargo carrying power unit designed to operate in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the truck tractor.

E. Notwithstanding any other subsection of this section, any trailer or semitrailer combination of such dimensions as those that were in actual and lawful use in this state on December 1, 1982 may be lawfully operated on the highways of this state. (66-7-404 NMSA 1978)

24-12-10-3.8. - EXCEPTIONS ON SIZE, WEIGHT AND LOAD. The provisions of Sections 12-10-3.1 through 12-10-3.7 of this ordinance governing size, weight and load shall not apply to fire apparatus, road machinery engaged in street construction or maintenance, or to implements of husbandry, including farm tractors, temporarily moved upon a street, or to a vehicle operated under the terms of a special permit issued as herein provided. (66-7-401 NMSA 1978)

24-12-10-4. - DISPLAY OF CURRENT VALID REGISTRATION PLATE.

A. It is a violation of this ordinance for any person to drive or park upon a public street or public parking area of this municipality any motor vehicle or trailer which does not display one or more visible current valid registration plates as required by state law.(*)

B. The registration plate shall be attached to the rear of the vehicle for which it is issued; however, the registration plate shall be attached to the front of a road tractor or truck tractor. The plate shall be securely fastened at all times, in a fixed horizontal position, at a height of not less than twelve inches from the ground, measuring from the bottom of the plate. It shall be in a place and position so as to be clearly visible, and it shall be maintained free from foreign material and in a condition to be clearly legible.

C. No vehicle, while being operated on the streets of this municipality, shall have displayed thereon, either on the front or the rear thereof, any license plate, including tab

or sticker, other than one issued, or validated, for the current registration period, by the division or any other licensing authority having jurisdiction over the vehicle.

No expired license plate, tab or sticker shall be displayed on such vehicle, other than an expired special license plate which may be exhibited on the front of the vehicle. (66-3-18 NMSA 1978)

D. Nothing contained herein shall be construed as prohibiting the use, on the front of the vehicle, of a promotional or advertising plate. (66-3-18 NMSA 1978)

E. Any police officer may, upon discovering that the registration plate of any vehicle is illegible because of wear or damage or other causes, issue a citation to the owner or operator of the vehicle. The citation shall provide that the owner shall, within thirty days from the date of the citation, apply for and obtain a duplicate or replacement plate from the division. (66-3-17 NMSA 1978)

F. Any motor vehicle owner who has been issued a citation for an illegible registration plate and who fails to comply with the terms of the citation requiring the acquisition of a duplicate or replacement plate within thirty days of the date of the citation is guilty of a misdemeanor. (66-8-10 NMSA 1978)

24-12-10-5. - EVIDENCE OF REGISTRATION TO BE SIGNED AND EXHIBITED ON DEMAND. Every owner, upon receipt of registration evidence, shall write his signature thereon in a space provided. Every such registration evidence or duplicates thereof validated by the division shall be exhibited upon demand of any police officer. (66-3-13 NMSA 1978)

24-12-10-6. - MANDATORY FINANCIAL RESPONSIBILITY.

A. No owner shall permit the operation of an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless the vehicle is specifically exempted from the provisions of the Mandatory Financial Responsibility Act [66-5-201 to 66-5-239 NMSA 1978].

B. No person shall drive an uninsured motor vehicle, or a motor vehicle for which evidence of financial responsibility as was affirmed to the department is not currently valid, upon the streets or highways of New Mexico unless he is specifically exempted from the provisions of the Mandatory Financial Responsibility Act.

C. For the purposes of the Mandatory Financial Responsibility Act, "uninsured motor vehicle" means a motor vehicle for which a motor vehicle insurance policy meeting the requirements of the laws of New Mexico and of the secretary is not in effect

or a surety bond or evidence of a sufficient cash deposit with the state treasurer. (66-5-205 NMSA 1978)

D. "Evidence of Financial Responsibility", as used in this Section, means evidence of the ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the evidence, arising out of the ownership, maintenance or use of a vehicle of a type subject to registration under the laws of New Mexico, in the following amounts:

- (1) twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident;
- (2) subject to this limit for one person, fifty thousand dollars (\$50,000) because of bodily injury to or death of two or more persons in any one accident;
- (3) ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one accident; and
- (4) if evidence is in the form of a surety bond or a cash deposit with the state treasurer, the total amount shall be sixty thousand dollars (\$60,000). (66-5-208 NMSA 1978)

E. Exemptions--Exempted from the mandatory financial responsibility provisions of this Section are the following:

- (1) a motor vehicle owned by the United States government, any state or any political subdivision of a state;
- (2) an implement of husbandry or special mobile equipment which is only incidentally operated upon the streets or highways within the limits of the municipality;
- (3) a motor vehicle operated upon a street or highway within the limits of the municipality only for the purpose of crossing such street or highway from one property to another;
- (4) a commercial motor vehicle registered or proportionally registered in New Mexico and any other jurisdiction, provided such motor vehicle is covered by a motor vehicle insurance policy or equivalent coverage or other form of financial responsibility in compliance with the laws of any other jurisdiction in which it is registered;
- (5) a motor vehicle approved as self-insured by the superintendent of insurance pursuant to Section 66-5-207.1 NMSA 1978; and

(6) any motor vehicle when the owner has submitted to the department a signed statement, in the form prescribed by the department, declaring that the vehicle will not be operated on the highways of New Mexico and explaining the reasons therefore. (66-5-207 NMSA 1978)

F. The office of the municipal court shall notify the Division of Motor Vehicles of the Transportation Department of the State of New Mexico of the conviction of any person violating the provisions of this Section.

G. Penalty. Any person found guilty of violating this Section shall be fined not more than three hundred dollars (\$300) (66-5-205 E NMSA 1978); provided however, that no person charged with violating this section shall be convicted if he produces in court evidence of financial responsibility valid at the time of issuance of the citation. (*)

H. When a law enforcement officer issues a driver who is involved in an accident a citation for failure to comply with the provisions of the Mandatory Financial Responsibility Act, the law enforcement officer shall at the same time:

(1) issue to the driver cited a temporary operation sticker, valid for thirty days after the date the sticker is issued, and forward by mail or delivery to the department a duplicate of the issued sticker; and

(2) remove the license plate from the vehicle and send it with the duplicate of the sticker to the department or, if it cannot be removed, permanently deface the plate. (66-5-205.1 NMSA 1978)

ARTICLE ELEVEN

24-12-11-1. - TRAFFIC VIOLATIONS BUREAU CREATED.

A. A traffic violations bureau is established to assist the municipal court in its administrative work.

B. The personnel of the bureau shall be responsible to the municipal judge.

C. The bureau shall be open at such hours as the municipal judge may designate.(*)

24-12-11-2. - FINES ACCEPTED BY THE TRAFFIC VIOLATIONS BUREAU.

A. The municipal judge who hears traffic cases shall designate by rule as provided in the Rules of Procedure for the Municipal Courts, adopted by the New Mexico Supreme Court, as amended, the specified offenses under the traffic ordinance of this municipality in respect to which payments of fines may be accepted by the traffic violations bureau.

B. The municipal judge shall specify by rule as provided in the Rules of Procedure for the Municipal Courts, adopted by the New Mexico Supreme Court, as amended, suitable schedules of the amount of the fines for first, second and subsequent offenses, provided the fines are within the limits declared by law or ordinance, and shall further specify what number of offenses shall require appearance before the judge.(*)

24-12-11-3. - WHEN PERSON CHARGED MAY ELECT TO APPEAR AT BUREAU OR BEFORE MUNICIPAL JUDGE.

A. Any person charged with an offense for which payment of a fine may be made to the traffic violations bureau under the foregoing provisions shall have the option of:

(1) paying the fine within the time specified in the notice of arrest at the traffic violations bureau upon entering a plea of guilty and upon waiving appearance in court; or

(2) upon a plea of not guilty shall be entitled to a trial as authorized by law and depositing any bail required as provided in the Rules of Procedure for the Municipal Courts, adopted by the New Mexico Supreme Court, as amended.

B. For the purpose of this ordinance, the payment of a fine to the traffic violations bureau shall be deemed an acknowledgment of conviction of the alleged offense. The traffic violations bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment of the fine.(*)

24-12-11-4 DUTIES OF TRAFFIC VIOLATIONS BUREAU.

A. The traffic violations bureau shall accept designated fines, issue receipts and represent in court violators who are permitted and who desire to plead guilty, waive appearance and give power of attorney.

B. The traffic violations bureau shall receive and issue receipts for cash bail from the persons who must or wish to be heard in court, enter the time for their appearance on the court docket and notify the arresting officer or the municipal attorney or the liaison officer if any are to be present.

C. The traffic violations bureau shall keep a record of all violations of the traffic ordinance together with a record of a final disposition of all such alleged offenses:

(1) the record shall be maintained to show all types of violations and the total of each; and

(2) the record shall accumulate during at least a two-year period and from that time on shall be maintained complete for at least the most recent two-year period.

D. The traffic violations bureau shall study the cases of drivers charged with frequent or serious violations of traffic ordinances or involved in frequent traffic accidents or any one serious accident, shall attempt to discover the reasons therefore and shall take whatever steps are lawful and reasonable to prevent the recurrence thereof or to have the licenses of the persons suspended or revoked.

E. The traffic violations bureau shall keep records and submit summarized monthly reports to the administrator of all notices issued and arrests made for violations of the traffic ordinances and of all fines collected by the traffic violations bureau of the court and of the final disposition or current status or every case of violations of the provisions of the said ordinances. The records shall be so maintained as to show all types of violations and the totals of each.

F. The traffic violations bureau shall follow such procedures as may be prescribed by the traffic ordinances of this municipality or as may be required by any law of this state. (*)

ARTICLE TWELVE

24-12-12-1. - PENALTIES.

24-12-12-1.1. - MAXIMUM PENALTY.

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

24-12-12-1.2 PENALTY ASSESSMENT PROGRAM.

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

24-12-12-1.3. - MANDATORY FEES UPON CONVICTION. Amended July, 2009

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

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

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

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

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

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

(1) municipal jailer training;

(2) construction planning, construction, operation and maintenance of the municipal jail;

(3) paying the costs of housing the municipality's prisoners in a county jail or detention facility or housing juveniles in a detention facility;

(4) complying with federal match or contribution requirements relating to jails or juvenile detention facilities;

(5) providing in-patient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;

(6) defraying the cost of transporting prisoners to jails or juvenile detention facilities; or

(7) providing electronic monitoring systems.

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

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

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

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

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

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

24-12-12-3. - CONDUCT OF ARRESTING OFFICER--NOTICES BY CITATION. Amended 2013

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

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

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

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

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

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

24-12-12-3.1. - ELECTRONIC UNIFORM TRAFFIC CITATION

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

24-12-12-4. - UNIFORM TRAFFIC CITATION IS COMPLAINT.

The uniform traffic citation used as a notice to appear is a valid complaint, though not verified. (66-8-131 NMSA 1978)

24-12-12-5. - ARREST WITHOUT WARRANT.

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

- (1) present at the scene of a motor vehicle accident;
- (2) on a street when charged with theft of a motor vehicle;
- (3) charged with crime in another jurisdiction, upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement he is likely to flee the jurisdiction of the state; (66-8-125 NMSA 1978)
- (4) charged with driving while under the influence of intoxicating liquor or drugs;

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

(6) charged with reckless driving;

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

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

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

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

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

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

24-12-12-6. - IMMEDIATE APPEARANCE BEFORE MUNICIPAL OR MAGISTRATE JUDGE.

Whenever any person is arrested for any violation of this ordinance or other law relating to motor vehicles punishable as a misdemeanor, he shall be immediately taken before an available municipal or magistrate judge who has jurisdiction of the offense when the:

(1) person requests immediate appearance;

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

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

- (4) person is charged with reckless driving;
- (5) arresting officer has good cause to believe the person arrested has committed a felony;
- (6) person refuses to give his written promise to appear in court or acknowledge receipt of a warning notice; or
- (7) person is charged with driving when his privilege to do so was suspended or revoked pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs. (66-8-122 NMSA 1978)

24-12-12-7. - FAILURE TO OBEY NOTICE TO APPEAR.

- A. It is a misdemeanor for any person to violate his written promise to appear in court, given to an officer upon issuance of a uniform traffic citation, regardless of the disposition of the charge for which the citation was issued.
- B. A written promise to appear in court may be complied with by appearance of counsel. (66-8-126 NMSA 1978)

24-12-12-8. - ARRESTING OFFICER TO BE IN UNIFORM. Amended July, 2007

- A. No person shall be arrested for violating this ordinance or other law relating to motor vehicles punishable as a misdemeanor except by a commissioned, salaried peace officer who, at the time of arrest, is wearing a uniform clearly indicating the peace officer's official status. (66-8-124 NMSA 1978)
- B. Notwithstanding the provisions of Subsection A of this section, a municipality may provide by ordinance that uniformed private security guards may be commissioned by the local police agency to issue parking citations for violations of clearly and properly marked fire zones and access zones for persons with significant mobility limitation. Prior to the commissioning of any security guard, the employer of the security guard shall agree in writing with the local police agency to the commissioning of the employer's security guard. The employer of any security guard commissioned under the provisions of this section shall be liable for the actions of that security guard in carrying out the security guard's duties pursuant to that commission. Notwithstanding the provisions of the Tort Claim Act, private security guards commissioned under this section shall not be deemed public employees under that act. (66-8-124 NMSA 1978)

24-12-12-9. - HANDLING OF CITATIONS

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

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

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

D. Upon filing of the uniform traffic citation in the municipal court, the citation may be disposed of only by trial in the court or by other official action by a judge of the court including, at the discretion of the municipal judge, forfeiture of bail or by payment of a fine to the traffic violations bureau of the court. (*)

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

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

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

24-12-12-10. - ILLEGAL CANCELLATION--AUDIT OF CITATION RECORDS.

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

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

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

24-12-12-11. - ABSTRACT OF TRAFFIC CASES--REPORT ON CONVICTIONS.

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

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

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

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

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

24-12-12-12. - CITATION ON ILLEGALLY PARKED VEHICLE.

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

24-12-12-13. - FAILURE TO COMPLY WITH TRAFFIC CITATION ATTACHED TO PARKED VEHICLE.

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

24-12-12-14. - PRESUMPTION IN REFERENCE TO ILLEGAL PARKING.

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

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

24-12-12-15. - WHEN WARRANT TO BE ISSUED.

In the event any person fails to comply with a traffic citation given to the person or attached to a vehicle or fails to make appearance pursuant to a summons directing an appearance in the municipal court or the traffic violations bureau, or if any person fails or refuses to deposit bail as required and

within the time permitted by ordinance, the municipal judge shall issue either a summons or a warrant for his arrest. (*)

24-12-12-16. - DISPOSITION OF TRAFFIC FINES AND FORFEITURES.

All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this ordinance shall be paid into the municipal treasury. (*)

24-12-12-17. - OFFICIAL MISCONDUCT.

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

24-12-12-18. - AUTHORITY TO REMOVE OR RELOCATE VEHICLES.

A. Definitions

For purposes of this section:

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

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

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

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

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

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

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

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

number where the owner, driver or passenger can obtain further information from a municipal employee.

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

B. Prohibition of Removal and Relocation.

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

C. Impoundment of Vehicles Generally.

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

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

D. Circumstances Permitting Summary Vehicle Impoundment or Relocation.

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

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

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

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

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

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

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

g) when the driver or person in control of a vehicle is lawfully taken into custody by a police officer, and said person is unable to immediately provide for the custody or removal of the vehicle, and (i) the vehicle is left

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

h) when an abandoned, unattended, wrecked, burned or partially dismantled vehicle is creating a traffic hazard because of its position in relation to the street, alley, or public way or its physical appearance is causing traffic to be impeded; (*)

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

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

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

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

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

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

o) when a vehicle is parked: on a sidewalk; within an intersection; on a crosswalk; within twenty (20) feet of a crosswalk at an intersection; within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway; between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the municipality indicates a different length by signs or markings; within fifty (50) feet of the nearest rail of a railroad crossing; within twenty (20) feet of the driveway entrance to any fire station and if properly signposted on the side of the street opposite the fire station entrance where posted; alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic; or on the roadway side of any vehicle stopped or parked at the edge or curb of a street. (66-7-351 NMSA 1978)

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

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

E. Notice and Procedure Following Summary Impoundment or Relocation.

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

(2) The notice shall contain the following information:

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

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

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

d) the reason for impoundment or relocation;

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

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

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

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

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

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

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

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

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

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

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

F. Abandoned Vehicles.

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

- a) the vehicle is parked on or along any street, alley or public way and the vehicle displays no current license plate; or
- b) the vehicle is left unattended on or along any street, alley or public way in the same place for a period of 72 hours without a valid police sticker as defined in paragraph 2 of this subsection.

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

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

- a) the date and time the notice is affixed to the automobile;
- b) a statement that, pursuant to this section of this ordinance the vehicle will be considered abandoned and may be towed and stored at the owner's expense if it is not removed within ten (10) days of the time that the notice is affixed;
- c) a statement that if the vehicle is impounded and no hearing is requested or it is not claimed, it can be sold after thirty (30) days as provided in state law;
- d) a statement that the owner has the opportunity to challenge the proposed action at a hearing if a written request is submitted to the municipal judge within 72 hours after notice is given as provided in paragraph 4 of this subsection;
- e) the telephone number where additional information can be obtained; and
- f) the identity of the person affixing the notice.

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

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

(6) The hearing, if requested in a timely manner, shall be held within 120 hours (excluding weekends and municipal holidays) of receipt of the request, unless the hearing is continued with the agreement of the owner. At the hearing, the municipal judge shall only determine whether the vehicle is or is not abandoned.

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

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

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

G. Impoundment for Investigation Evidence or Forfeiture.

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

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

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

H. Release of Vehicles.

(1) The municipal judge or his designated representatives may order the release of an impounded vehicle if a hearing has been requested on the legality of impoundment and upon the posting of bond as set by the municipal judge or his

designee. When bond is posted the vehicle shall be released into the possession of the owner or his designee.

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

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

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

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

I. Penalties.

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

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

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

24-12-12-19. - ABANDONED VEHICLES ON PRIVATE PROPERTY.

A. A person upon whose property or in whose possession is found an abandoned vehicle or motor vehicle, shall have authority to sell, retain, give away or dispose of the abandoned vehicle or motor vehicle to any person licensed under Sections 66-4-1 through 66-4-9 NMSA 1978 provided that he notifies a law enforcement agency prior to such disposal and obtains from that agency a written clearance stating that neither the agency's

records nor the computerized records of the National Crime Information Center indicates that the vehicle or motor vehicle has been reported as stolen, and either:

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

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

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

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

24-12-12-20. - AUTHORIZED IMMOBILIZATION OF VEHICLE.

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

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

by this municipality for violation of this ordinance and also advising him of the provisions for release of the vehicle.

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

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

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

24-12-12-21. - LIABILITY FOR DAMAGE.

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

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

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

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

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

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

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

24-12-12-22. - SUNDAY ACTIONS.

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

ARTICLE THIRTEEN

24-12-13-1. - SHORT TITLE.

This ordinance may be cited as the Alamogordo Uniform Traffic Ordinance.

24-12-13-2. - EFFECT OF HEADINGS.

Headings contained in this ordinance shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this ordinance.

24-12-13-3. - SAVINGS CLAUSE.

If any part or parts of this ordinance are held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining parts of this ordinance.

24-12-13-4. - ACT NOT RETROACTIVE.

This ordinance does not have a retroactive effect and does not apply to any traffic accident, to any cause of action arising out of a traffic accident or judgment arising therefrom, or to any violation of the traffic ordinance of this municipality, occurring prior to the effective date of this ordinance.

24-12-13-5. - REPEAL.

The existing ordinances covering the same matters as embraced in this ordinance are repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are repealed.

24-12-13-6. – NOT ADOPTED

24-13 Parking

24-13-010 - Residential parking restricted.

- (a) Except when necessary to avoid conflict with other traffic, or in compliance with this section or the directions of a police officer or official traffic-control device, no person shall stop, stand or park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers, at any place where an official sign reads "Residential Parking Only," and along the curb within ten feet of either side of such sign, unless given permission by the resident living directly behind the sign. Except upon the conditions listed in this section, it shall be unlawful to place a vehicle, occupied or not, along the curb within ten feet of a "Designated Mobility Disabled Resident Parking Only" sign unless the vehicle has the requisite handicapped placard and the resident living directly behind the sign has given permission for the vehicle to occupy the space. A citation for violation of this section shall be written only upon complaint of such resident.
- (b) The determination to post a residence with "Residential Parking Only" signs shall be made by the city commission, after good cause is shown by the applicant. Good cause must include the reasons why the applicant's residence contains inadequate parking to meet the needs of the applicant. No residence may be posted which is not within five hundred (500) feet of the property line of a public meeting place.
- (c) A fee of one hundred dollars (\$100.00) shall be paid to the city treasurer upon approval of each application.
- (d) The determination to post a residence with "Designated Mobility Disabled Resident Parking Only" signs shall be made administratively by a designee of the city manager, after good cause is shown by the applicant. Good cause must include the reasons why the applicant's residence contains inadequate parking to meet the needs of the applicant.
- (e) At the first meeting in January each year, city manager shall prepare a list of the locations of all "Residential Parking Only" signs and all "Designated Mobility Disability Resident Parking Only" signs in the city. The city manager shall recommend continuance or discontinuance of each location; if discontinuance is recommended, the resident(s) shall be notified by first class mail not less than seven (7) days before the meeting. The commission shall direct the discontinuance and removal of signs at any location deemed advisable.
- (f) The city manager shall have the authority to direct the removal of "Residential Parking Only" or "Designated Mobility Disabled Resident Parking Only" signs at any location not identified on the list of such signs approved by the city commission.
- (g) Existing signs with wording approved under previous versions of this section remain effective and enforceable, but shall not be replaced except with signs containing the currently approved wording.

24-13-020. - Parking at businesses for persons with mobility disabilities.

- (a) The determination to post the curb area adjacent to a business with "Parking Designated for Persons with Mobility Disability" signs shall be made by the city commission, after good cause is shown by the applicant. Good cause must include a statement that the applicant's business does not have off-street parking available or an off-street parking space that could be used for parking for persons with mobility disabilities.

- (b) The application will be accompanied by an application fee of fifty dollars (\$50.00) to defray the costs of investigating the application and giving notice in accordance with this ordinance.
- (c) In determining whether or not to authorize a sign in accordance with this section, the commission will consider the likelihood that the parking space will serve more than one person and whether the need of the business for the space is likely to be on-going.
- (d) Before an application to post a sign according to this section can be considered by the city commission, the planning division will give notice of the application to all property owners within a 200-foot radius of the requesting business at least ten days prior to the meeting.
- (e) A fee of one hundred dollars (\$100.00) for the sign shall be paid to the city treasurer upon approval of each application.
- (f) The city commission will review signs placed in connection with this ordinance at the same time and in the same manner with which it reviews signs placed in accordance with section 24-01-080.

24-13-030. - Additional parking restrictions.

- (a) No person shall park a vehicle on a street that has been posted with No Parking signs.
- (b) No vehicle shall be parked within three (3) feet behind a curb adjacent to a street.
- (c) No person shall park a truck-tractor, road tractor, or combination of any such tractor and trailer or semitrailer, on a street in a residence district except when necessary for loading or unloading of property. In any event, parking of any such vehicle shall not obstruct traffic to any greater degree than is strictly necessary.
- (d) No person shall park any vehicle in an area that is designated as a fire lane by a posted sign or by a curb painted red.

24-14. - Public Ways

24-14-010. - Jogging, etc., at night.

Every person who jogs or runs in any roadway at night shall wear or carry reflective clothing, tape or equipment, or lights, or a combination thereof, so that he or she is visible from a distance of five hundred (500) feet, from any angle, when illuminated by the low beam headlights of an automobile.

24-14-020. - Use of public ways.

The public streets, sidewalks and adjoining rights-of-ways are for the purposes of vehicular, pedestrian and similar traffic, for parking, and for open space appropriate to adjoining land uses.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/16/2018

Report No: 14.

Submitted By: Petria Schreiber

Subject: Consider, and act upon, Resolution 2018-21 approving a GRIP agreement between the City of Alamogordo and Solid Cap Properties for the remodeling of the location for Melrose Family Fashions. (*Petria Schreiber, City Attorney*)

Fiscal Impact: Approximately \$5,000

Amount Budgeted: \$98,171.00

Fund: 011-2400-419.58-18 Incentives

Additional Fiscal Impact:

Recommendation: Approve agreement

Background: Consider and act upon Resolution 2018-21 approving a GRIP agreement between the City of Alamogordo and Solid Cap Properties for the remodeling of the location for Melrose Family Fashions.

RESOLUTION NO. 2018-21

A RESOLUTION AUTHORIZING EXECUTION OF A GROSS RECEIPTS INVESTMENT PROGRAM ("GRIP") AGREEMENT BETWEEN THE CITY OF ALAMOGORDO AND SOLID CAP PROPERTIES, LLC FOR THE REMODELING OF MELROSE FAMILY FASHIONS

BE IT RESOLVED by the City Commission of the City of Alamogordo, New Mexico as follows:

1. That the form and substance of a certain Gross Receipts Investment Program Agreement (the "Agreement"), between the City of Alamogordo (the "City") and Solid Cap Properties, LLC (the "Developer"), as set forth in the form of the Agreement submitted to this meeting, is hereby approved.

2. That the City Manager is hereby authorized and directed for and on behalf of the City to execute the Agreement substantially in the form approved in the foregoing paragraph of this Resolution.

3. That Solid Cap Properties shall be refunded the portion of gross receipts tax and municipal gross receipts tax paid to the City of Alamogordo for the remodel of the Melrose Family Fashions location at 3199 North White Sands Blvd., Alamogordo, New Mexico in an amount to be determined by submission of invoices on which gross receipts taxes were paid to the State of New Mexico to the credited to the City of Alamogordo.

4. That the proper officials, agents and employees of the City are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the City in accordance with the provisions of the Agreement.

DONE this _____ day of April, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Schreiber, City Attorney

GROSS RECEIPTS INVESTMENT PROGRAM (“GRIP”) AGREEMENT

THIS AGREEMENT made on this _____ day of April, 2018, between the City of Alamogordo, a New Mexico municipal corporation (“City”), and Solid CAP Properties, LLC, a New Mexico corporation, whose address is 3199 N. White Sands Blvd., Alamogordo, New Mexico 88310 (“Developer”).

WHEREAS, pursuant to Ordinance No. 1379, effective on October 12, 2010, and extended by Ordinance No. 1505, effective on December 11, 2015, the City is authorized to enter into “Gross Receipts Investment Program” (“GRIP”) Agreements with qualified applicants for eligible projects, as defined in said Ordinance, in order to provide new job opportunities within the City, promote the economic growth and welfare of the City, and to improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, Developer owns certain real property within the City located at 3199 North White Sands Boulevard, and legally described in Exhibit “A” attached hereto, City of Alamogordo, Otero County, New Mexico; and,

WHEREAS, Developer has made application (attached hereto as Exhibit “B”) for reimbursement of certain gross receipts taxes directly attributable to construction activities associated with the project as described in the application; and,

WHEREAS, in said application, the Developer makes the good faith projection that the total cost of the Project will be approximately \$500,000; and

WHEREAS, after having considered the application, the City Commission has concluded that the economic and other benefits of the Project to the City will be substantial, that it is desirable and necessary at this time to authorize the City to enter into the Agreement, and that the City’s provision of the assistance contemplated by the Agreement will foster, promote and enhance the economic growth and welfare of the City, and improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, by Resolution 2018-21, the City Commission has authorized the City Manager to execute this GRIP Agreement with the Developer.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. General Terms.

- (a) The Project consists of the subdivision and remodeling of a 14,550 square foot portion of the property for lease to retailer Melrose Family Fashions. Developer, after receipt of the promises and inducements contained herein, agrees to develop the Project in accordance with plans and specifications approved by the Construction Industries Division of the New Mexico Regulation and Licensing Department. The estimated cost of the improvements is \$500,000.00 exclusive of gross receipts tax.

- (b) The parties hereto acknowledge, and the Developer represents and warrants, that: (i) the Project involves the building of a structure, or the expansion of an existing structure, for use by a commercial activity whose services are partially subject to gross receipts tax, said structure to have a value in excess of \$50,000; (ii) the Developer has, or will establish, and maintain a physical presence in the City sufficient to subject the Project to Local Option Gross Receipts Tax; and (iii) the Developer will give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency.
- (c) For purposes of this Agreement, the use of the terms “gross receipts tax” and “gross receipts tax revenue” shall be construed to refer to that net portion of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act and which are collected by the State of New Mexico and distributed to the City (current rate = 1.225%), and all revenue derived from such taxes, and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%), and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the City enacts any law or statute which results or which may result in any material changes or amendments to the foregoing provisions, which changes or amendments prohibit the City from complying with this Agreement or which adversely affect the City’s ability to comply herewith, then the City and the Developer shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute which has materially affected the City’s compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder.

2. Municipal Gross Receipts Tax Payment. The City agrees to set aside and thereafter rebate to the Developer the municipal gross receipts tax revenues directly attributable to construction of the Project. It is estimated that approximately \$8,625 in gross receipt tax revenues will be abated pursuant to this Agreement (*\$500,000 estimated construction costs x 1.7250%*). The City and the Developer hereby acknowledge that this estimate is only an approximation, and that the actual abatement may be for a greater or lesser amount depending upon the actual amount of such taxes levied. Payment shall be made to the Developer within ninety (90) days after the City is presented with copies of each invoice associated with the Project. In the event that any invoices that have been submitted to the City are amended, the Developer shall promptly forward a photocopy of such amended invoice to the City, clearly identifying them as an amendment of an amendment previously submitted to the City.

3. No General Obligation/Special Fund. It is an overriding consideration and determination of the City that existing sources of its gross receipts tax revenues shall not be used, impaired or otherwise affected by this Agreement. The amount due pursuant to this Agreement shall not be a general obligation of the City. The City shall not have an obligation to pay any amounts to Developer except an amount equal to the City's share of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act (current rate = 1.225%), and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%).

4. Term. The term of this Agreement shall be thirty-six (36) months from the date of issuance of a building permit for the Project. Upon receipt of the maximum rebate amount by Developer in accordance with this Agreement, the City's obligation to rebate gross receipts tax revenue to Developer shall terminate, but all other provisions of this Agreement shall remain in full force and effect through the end of the thirty-six (36) month term. Upon expiration of the term of this Agreement, the parties' obligations hereunder shall terminate, whether or not the maximum amount of gross receipts tax revenue rebate has been reached.

5. Escrow. The parties agree that in the event of any legal challenge to this Agreement, the City shall place any and all funds to which the Developer would have a claim under the terms of this Agreement in an interest bearing account, capable of separate identification, during the pendency of the legal challenge. Upon any final decision upholding the enforceability of this Agreement, all amounts in such account, including principal and accrued interest, shall be paid forthwith to the Developer. If this Agreement is determined to be invalid or unenforceable, all amounts in such account, including principal and accrued interest, shall be deposited by the City into its general fund and the Developer shall have no further claim thereto. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party.

6. Approval and Modification. This Agreement shall take effect only upon approval by the Alamogordo City Commission at a regular or special City Commission meeting. No modification of this Agreement shall be valid or binding unless the same is in writing and approved by the City Commission at a regular or special meeting.

7. Assignment. This Agreement shall be binding upon and inure to the benefit of the Developer and the City. The City's commitment to make the payments hereunder are made for the benefit of the Developer, and shall be enforceable by the Developer or any affiliate of the Developer or other party who is a successor-in-title to Developer's interest in the Project and has assumed in writing the duties and obligations of the Developer, provided that nothing shall require the Developer to assign the benefits of this Agreement to any successor-in-title to Developer's interest in the Project and the City agrees that the Developer may transfer title to the Project while retaining the benefits of this Agreement. The Developer shall also have the right to assign this Agreement, and the City's obligation to make payment of the gross receipts tax revenues, to a third party independent of a transfer of title to the Project, including, but not limited to, any assignment, pledge or encumbrance of the Developer's rights under this Agreement in favor of any lender or other person providing financing for construction and development of the Project. The term "affiliate" shall mean an entity or individual which

directly or indirectly controls, is controlled by, or is under common control with any identified person and, as to natural persons, shall also include the immediate family of such persons. Except as authorized in this Paragraph, this Agreement is personal to the Developer. This Agreement shall not run with the land.

8. Controlling Law and Venue. This Agreement shall be construed pursuant to the laws of the State of New Mexico. Exclusive jurisdiction for the resolution of any dispute relating to this Agreement is hereby vested in the Otero County District Court or the United States District Court of New Mexico.

9. Contingency; No Debt. The City's financial obligations under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligation. This Agreement shall never constitute a debt or obligation of the City within any statutory or constitutional provision. Each year, the City shall include in the budget presented to the City Council a proposed appropriation for the rebate of the gross receipts tax revenues to which Developer is entitled under this Agreement, if any. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement in future years, and the failure of the City in any year to appropriate the gross receipts tax revenues otherwise due Developer shall cause the term of this Agreement to be extended by one year. Without contradiction of the preceding sentence, the City does hereby state that it is the present intent and expectation of the parties that the City will make all of the payments contemplated by this Agreement.

10. No Joint Venture. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

11. No Third-Party Beneficiaries. Except as may be expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

12. Force Majeure. The time of performance of any duty or obligation of Developer or the City hereunder shall be extended for the period during which performance was delayed or impeded by reason of riots, insurrections, war, fire, casualty, earthquake, acts of God, or other reasons of a like nature not the fault of the party performing such duty or obligation.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Maggie Paluch, Acting City Manager

Solid CAP Properties, LLC

By: _____
Fred Griffith

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Schreiber, City Attorney

RECEIVED

FEB 12 2018

APPLICATION FOR GROSS RECEIPTS TAX ABATEMENT
CITY OF ALAMOGORDO, NEW MEXICO

City of Alamogordo
City Attorney's
Office

FILING INSTRUCTIONS:

This filing acknowledges familiarity and assumed conformance with "Ordinance No. 1379, and Ordinance No. 1505, Gross Receipts Investment Program" ("GRIP"). This application will become part of any later agreement or contract and knowingly false representations thereon will be grounds for the voiding of any later agreement or contract.

ORIGINAL COPY OF THIS APPLICATION AND ATTACHMENTS SHOULD BE
SUBMITTED TO:

CITY ATTORNEY
CITY OF ALAMOGORDO
1376 EAST 9TH STREET
ALAMOGORDO, NM 88310

PART 1 - APPLICANT INFORMATION

Business Name: SOLID CAP PROPERTIES, LLC.
Submittal Date: _____
Address/City: 3199 N. white Sands Blvd. Alamogordo NM 88310
Name/Address/Phone of Business Contact on this Project: IDA MANGUM 575 434-3990
OR (505) 879-3478 3199 N. WHITE SANDS BLVD. ALAMOGORDO NM 88310

Business Owner ☒ Developer ☐
Type of Business: Corporation ☐ Partnership ☐
Proprietorship ☐ Limited Liability Company ☒

PART II - PROJECT INFORMATION

This application is for a: New Business ☒ Expanding Existing Business ☐
Type of Activity: Commercial ☐ Retail ☒
Attach a brief company overview, including a brief description of the product(s) and/or services, years in respective industry, and major clients/buyers of company's products and/or services.
Attachment Yes ☒

Attach a brief description of the product(s) and/or services that will be produced or sold in Alamogordo? Attachment Yes ☒
Type of Construction: New Construction ☐ Rehabilitation of Existing Structure ☒

Proposed Facility Address and Legal Description: (See Exhibit A)
3201 N. WHITE SANDS BLVD, SUITE A
Attach a map showing site: (See Exhibit B)

PLEASE COMPLETE AND SUBMIT THE FOLLOWING FOR THE PROJECT:

Please attach a statement:

- Total estimated cost of the expansion or new construction: \$ _____
 Include documentation to support cost of improvements. Acceptable examples are:

- You must document that the value of the expansion or new construction exceeds \$50,000.00.

A. Estimated cost of improvements: \$ 500,000

B. Permanent employment estimates:

If existing facility, the current employment level: 0
Estimated number of new jobs created: 30

C. Construction employment estimates:

Construction to start: Month: NOV Year: 2017
Construction to be completed: Month: FEB Year: 2018

Number of construction jobs anticipated:
At start: Peak: Finish: _____

D. Estimated property tax base value increase:

Valuation of existing property as of January 1, preceding this application:

LAND	?	IMPROVEMENTS	?
\$		\$	

Estimated value of property upon completion of the project subject.

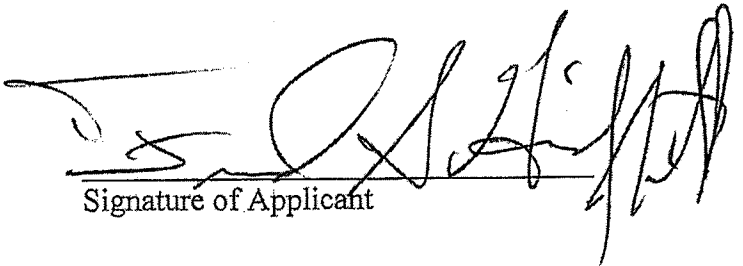
LAND IMPROVEMENTS
\$? \$?

Estimated Gross Receipt Taxes generated by the business prior to the expansion or construction. \$ 0

Estimated Gross Receipt Taxes to be generated by the business after the expansion or construction. \$ 2 MILLION

I declare under the penalties of falsification that this application, including all enclosed documents and statements, has been examined by me, and to the best of my knowledge and belief is true, correct, and complete.

2/12/18
Date

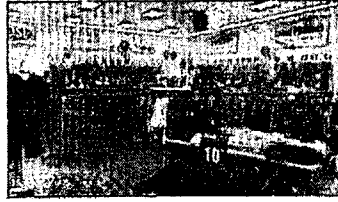

Signature of Applicant



[DEPARTMENTS](#) & [GALLERY](#) [STORE LOCATOR](#) [EMAIL SIGN UP](#) [CAREERS](#)



OUR STORY



Melrose began in 1976 with one clothing store in McAllen, Texas. This single store specialized in fashion for "Juniors", but grew over the years into a chain that included a Plus size department as well as a Contemporary Misses department for the modern working or family woman.

Now, over forty years later, we have over one hundred stores throughout Texas, New Mexico, Arizona, Nevada and California. We will continue to grow with brand new stores opening this year to bring great styles at great savings to more cities and towns across the country. This successful growth stems from a simple concept of offering our customers quality fashion styles at the lowest prices.

In recent years Melrose has added departments for men and kids fashions. Recently, electronics, home goods and an expanded cosmetics departments have been added making it a destination store for the family and home. The growing number of Melrose Family Fashions stores makes us a great one stop shop for quality affordable fashions for family and home.

Property Record Card

Otero Assessor

**SOLID CAP PROPERTIES
LLC
C/O: ANITA ARTALEJO**

**Account: R010312
WHITE SANDS MALL
Tax Area: 01_NR**

Parcel: 01N4054093520110
Situs Address:
3199 N WHITE SANDS BLVD
ALAMOGORDO, 88310

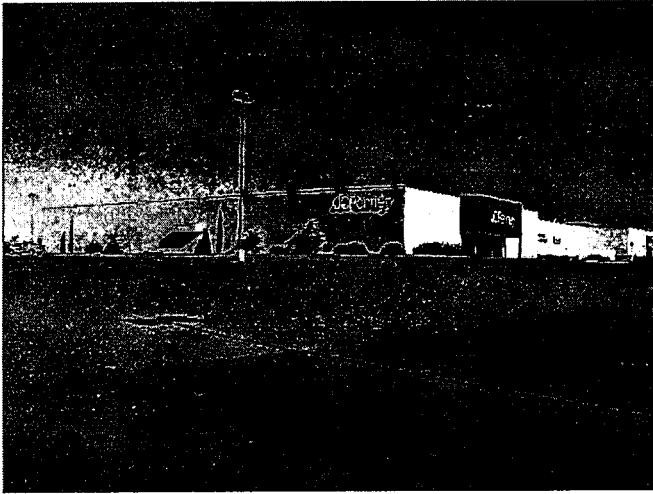
1500 WEST MALONEY
GALLUP, NM 87301

Parcel ID 01-00490
Parcel Size 16.311

Neighborhood C32 - Commercial N White Sands

Legal Description

Subd: WHITE SANDS MALL REPLAT #1 Lot: 1 - 16.311 ACRES
MORE OR LESS



Public Remarks

Entry Date	Model	Remark
02/24/2014	Commercial Occurrence 1	NO CHG TO THE EXTERIOR STRUCTURE FOR THE TAX YEAR 2014

Land Occurrence 1

Property Code	0200 - Non-Residential Land	Land Use Code	CM1 - Comm/Indus Lots
Acres	16.311	Description - PA, PS, PL, SF	SF
Rate	\$1.60	Zoning	C-3 - Business
Topography Code	F - Flat Land	Sewer Type	Municipal Sewer
Street Code	Asphalt Paving		

Commercial Occurrence 1

Property Code	0220 - Non-Residential Improvement	Building Type	414 - Regional Shopping Center
Actual Year Built	1982	SQFT	264671

Property Record Card

Otero Assessor

Commercial Occurrence 1

Construction Quality	2.0 - Average	Foundation	Concrete Slab
Construction Type	S - Metal Frame and Walls	Stories	1 - One Story
Story Height	12	Roof Structure	F - Flat
Roof Cover	RBR - Rubber Roofing	Exterior Wall	STC - Stucco CMU - Concrete Masonry Unit MET - Metal
Interior Wall	D - Dry Wall	Floor	R - Resilient
Heating Fuel	NG - Natural Gas	Heating Type	PU - Package Unit
Air Conditioning	PU - Package Refrigerated Air	Sprinklers	Wet Sprinklers
Condition	Fair		

Section 1 System Code 152 (Miscellaneous Yard Improvements) 15 - 25'
LIGHT POLES 375 units \$88.00 0.87% Depreciation Local Multiplier
No Architect Fees

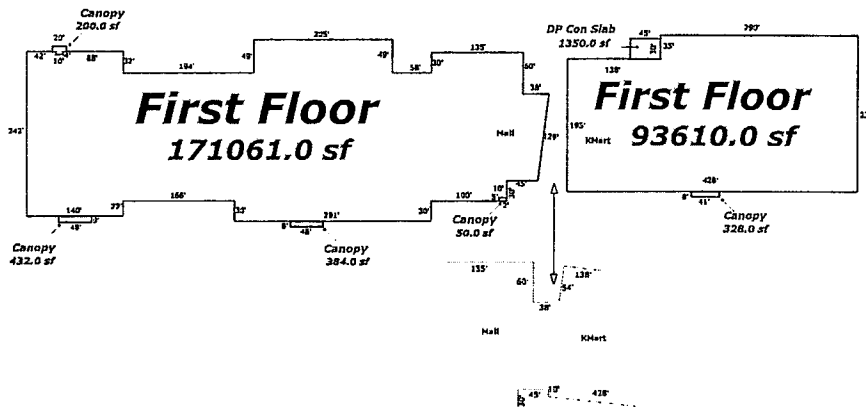
Section 1 System Code 149 (Parking Lots) ASPHALT PAVING 674771
units \$2.37 0.87% Depreciation Local Multiplier No Architect Fees

Section 1 System Code 152 (Miscellaneous Yard Improvements)
LUMINAIRES 45 units \$315.00 0.87% Depreciation Local Multiplier
No Architect Fees

Section 1 System Code 142 (Paving/Decking) CONCRETE PAVING
1350 units \$5.33 0.87% Depreciation Local Multiplier No Architect Fees

SubArea	ACTUAL	EFFECTIVE	HEATED	FOOTPRINT
CP Con Slab	1394.0			
DP Con Slab	1350.0			
GBA 1st Floor	264671.0		264671.0	
Total	267,415.00		264,671.00	

Commercial #1
Total 264,671 sf



Sketch by Apex Sketch v8 Pro™

Commercial Occurrence 2

Property Code	0220 - Non-Residential Improvement	Building Type	412 - Neighborhood Shopping Center
SQFT	4674	Construction Quality	2.0 - Average
Foundation	Concrete Slab	Construction Type	C - Masonry Bearing Walls
Stories	1 - One Story	Story Height	12
Roof Structure	F - Flat	Roof Cover	TGR - Tar and Gravel Built-up
Exterior Wall	CMU - Concrete Masonry Unit	Interior Wall	D - Dry Wall

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: **Bald Cap Properties** 3181 N. White Sands Blvd. Alamogordo, NM 88310 PROJECT: **Medina Pavilion** 3301 N. White Sands Blvd. Alamogordo, NM 88310 APPLICATION NO: **4** PERIOD TO: **2/28/2018** DISTRIBUTION TO: ☒ OWNER ☐ ARCHITECT ☐ CONTRACTOR

FROM (CONTRACTOR): **National Construction, Inc.** P.O. Box 1479 Alamogordo, NM 88311 VA: PROJECT NO:

CONTRACT FOR: **Medina TI** CONTRACT DATE: **September 18, 2017**

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		
Change Orders approved in previous months by Owner	ADDITIONS	REDUCTIONS
Approved this Month		
Number	Date Approved	
1	12/1/2016	3,970.00
2	1/31/2018	1,520.00
3	2/28/2018	7,655.56
TOTAL		13,145.56
Net change by Change Orders		13,145.56

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts there stated have been paid by the Owner, and that the Contractor is entitled to payment of the amount stated in this Application for Payment.

CONTRACTOR: **National Construction, Inc.**

By: *[Signature]* 2/28/2018

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data compiled, the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

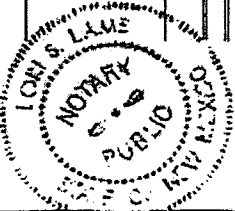
Application is made for Payment, as shown below, in connection with the Contract. Contractor's Application is attached.

1. ORIGINAL CONTRACT SUM \$ 438,353.00
2. NET CHANGE BY CHANGE ORDERS \$ 13,145.56
3. CONTRACT SUM TO DATE (LINE 1 + 2) \$ 451,498.56
4. TOTAL COMPLETED & STORED TO DATE \$ 450,811.56
5. RETAINAGE (Column 3)
 - a. 10% of completed work \$ 45,149.86
 - b. (Column 3 - a) \$ 405,661.70
6. Total Retainage (Line 5a + 5b) \$ 45,149.86
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 351,297.00
8. CURRENT PAYMENT DUE \$ 99,324.56
9. CURRENT GROSS RECEIPTS TAX 10% \$ 9,932.46
10. TOTAL PAYMENT DUE INCLUDING TAX \$ 109,257.02
11. BALANCE TO FINISH \$ 7,927.00

State of New Mexico, County of Otero
Subscribed and sworn to before me this 28th day of February, 2018
Notary Public
[Signature]

AMOUNT CERTIFIED: \$ 3

By: *[Signature]* Date: 2/28/2018
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



OK
3/1/18
[Signature]

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/16/2018

Report No: 15.

Submitted By: Kitty Williams

Subject: Consider, and act upon, first publication of Ordinance 1569 updating Chapter 13 of the Alamogordo Code of Ordinances to comply with Federal requirements. (*Nancy Beshaler, Project Manager*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve Ordinance 1569 for first publication

Background:

The city participates in the National Flood Insurance Program (NFIP) which makes federally backed flood insurance and federal disaster assistance available to participating communities. The program is administered through the Federal Emergency Management Agency (FEMA). As part of the NFIP, the city's administration of the floodplain is periodically reviewed by FEMA. In March 2018, FEMA performed this review via a Community Assistance Visit (CAV).

FEMA has directed the city to update Chapter 13 Flood Damage Prevention Ordinance to meet the minimum NFIP regulations. The attached ordinance is updated to meet minimum NFIP regulations. The key changes are:

- Replace Article 13-03-020 with the FEMA model ordinance language to include flood zone AE elevation requirements per 44 CFR 60.3(c)(2), which were missing from the existing ordinance.
- Add an item to Article 13-03-100 requiring development of base flood elevation data in subdivisions that greater than 50 lots or 5 acres in zone A, as required by 44 CFR 60.3(b)(3).

Adoption of the Ordinance will keep the city in compliance with the National Flood Insurance Program.

ORDINANCE NO. 1569**AMENDING SECTIONS OF CHAPTER 13, FLOOD DAMAGE PREVENTION
IN ORDER TO MEET FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)
MINIMUM REQUIREMENTS AND TO REMAIN COMPLAINT WITH THE
NATIONAL FLOOD INSURANCE PROGRAM**

WHEREAS, on December 7, 2010, the City Commission approved Ordinance No. 1388 updating Chapter 133; and,

WHEREAS, City staff has been advised by the National Flood Insurance Program and FEMA that updates are necessary to keep the City in compliance,

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo that the following sections of Chapter 13, of the Alamogordo Code of Ordinances, are hereby amended as follows.

SECTION ONE:**ARTICLE 13-02 - ADMINISTRATION**

13-02-005. - Establishment of development permit.

A floodplain development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in section 13-01-050.

Cross reference— Subdivision regulations, ch. 22.

13-02-010. - Designation of the floodplain administrator.

The city engineer, or his/her designated representative, is hereby appointed the floodplain administrator to administer, implement and enforce the provisions of this chapter by granting or denying development permits in accordance with its provisions. Only a person who is certified pursuant to the state-certified flood plain manager program may be designated as a representative of the city engineer.

13-02-020. - Duties and responsibilities of the floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter.
- (2) Review floodplain development permit applications to determine that:
 - a. The permit requirements of this chapter have been satisfied;

- b. All other required state and federal permits have been obtained;
 - c. The site will be reasonably safe from flooding; and
 - d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (3) Review all subdivision and other proposed new development, including manufactured home and recreational vehicle parks to determine whether the proposed development site will be reasonably safe from flooding. When the proposed building site is located in the special flood hazard area, all new construction and substantial improvements will meet the applicable standards of section 13-03-010 and Section 13-03-100.
- (4) Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).
- (5) Whenever a watercourse is to be altered or relocated:
- a. Notify adjacent communities prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the state coordinating agency which is the New Mexico Department of Homeland Security and Emergency Management (DHSEM);
 - b. Require that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained; and (iii) when the alteration or relocation of a watercourse causes a rise in the base flood elevation, or inundation of areas not previously in the special flood hazard area, as soon as practicable, but not later than six (6) months after the date such information becomes available, the floodplain administrator shall require those doing the watercourse alteration or relocation to notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
- (6) When base flood elevations are not available, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of this chapter. This information shall be submitted to the city commission for adoption.
- (7) Take actions on violations of this chapter as required in section 13-01-120 herein.
- (8) Notify the Federal Emergency Management Agency of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

13-02-030. - Permit procedures.

- (a) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to,

plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures using the same vertical datum as the effective flood insurance rate map (FIRM) for the community and documented on the current form FEMA 81-31, Elevation Certificate. In Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;
 - (2) Elevation in relation to mean sea level to which any new or substantially improved non-residential structure will be flood-proofed;
 - (3) A certificate from a registered professional engineer or architect, licensed in the state, that the nonresidential flood-proofed structure shall meet the flood-proofing criteria of section 13-03-020(b);
 - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (5) Certification by a registered professional engineer, licensed in the State of New Mexico, that the cumulative effect of proposed development within zones A1—30 and AE on the community's FIRM, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community, along with the technical data to support the certification.
- (b) Approval or denial of a development permit by the floodplain administrator shall be based on all of the provisions of this chapter and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable;
 - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Cross reference— Buildings and building regulations, ch. 8; civil defense, ch. 10; health and sanitation, ch. 15; planning, ch. 20; trailers, mobile homes and recreational vehicles, ch. 25; water, sewers and sewage disposal, ch. 28; zoning, ch. 29.

13-02-040. - Variance procedures.

- (a) Board of appeals.
 - (1) The city commission shall hear and render judgment on requests for variances from the requirements of this chapter.
 - (2) The city commission shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
 - (3) Any person or persons aggrieved by the decision of the city commission may appeal such decision in the courts of competent jurisdiction.
 - (4) In passing upon such applications, the city commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger of life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in time of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.
- (b) Any applicant to whom a variance is granted shall be given written notice that
 - (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

- (c) The floodplain administrator shall:
 - (1) Maintain a record of all variance actions, including justification for their issuance; and
 - (2) Report such variances issued in its annual or biennial report submitted to the Federal Insurance Administrator.

13-02-050. - Conditions for variances.

- (a) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in section 13-02-050(d) have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.
- (b) Variances may be issued for the repair or rehabilitation of historical structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure
- (c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter. For example, in the case of variances to an elevation requirement, this means the city commission need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposed, but only to that elevation which the city commission believes will both provide relief and preserve the integrity of the local chapter.
- (e) Variances shall only be issued upon
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (f) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - (1) The criteria outlined in this section are met; and
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- (g) Upon consideration of the factors noted above and the intent of this chapter, the city commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

ARTICLE 13-03 - FLOOD HAZARD REDUCTION PROVISIONS

13-03-010. - Standards of construction.

In all areas of special flood hazards the following standards are required:

- (a) Anchoring.
 - (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) All manufactured homes shall meet the anchoring standards of section 13-03-040 ~~070~~.
- (b) Construction materials and methods.
 - (1) All new construction or substantial improvements shall be constructed using methods and practices that minimize flood damage;
 - (2) All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 - (3) All new construction and substantial improvements and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (4) Within zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.
 - (5) When a regulatory floodway has not been designated, construction, substantial improvements, or other development (including fill) shall not be permitted within zones A1—30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

13-03-020. - Elevation and floodproofing.

~~(a) — Residential construction. Residential construction, new or substantial improvements, shall have the lowest floor (including basement), be elevated above the highest adjacent grade to a height exceeding the depth number specified in feet on the FIRM by at least one (1) foot, or elevated at least three (3) feet above the highest adjacent grade if no depth number is specified. Upon completion of the structure, a registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection is satisfied.~~

(b) — Nonresidential construction. Nonresidential construction, new or substantial improvements shall be elevated to or above the regulatory flood elevation, or elevated at least two (2) feet above the highest adjacent grade if no depth number is specified, or together with attendant utility and sanitary facilities, and:

(1) — Be flood proofed below the elevation recommended under section 13-03-020(a) so that the structure is watertight with walls substantially impermeable to the passage of water;

(2) — Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(3) — Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the floodplain administrator.

(c) — Areas of shallow flooding (AO/AH zones).

(1) — All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).

(2) — All new construction and substantial improvements of nonresidential structures shall:

a. — Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified), or

b. — Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) — A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in section 13-02-030(a), are satisfied.

(4) — Require, within zones AH or AO, adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(a) Located within the areas of special flood hazards where base flood elevation data has been provided (AE/AH zones), the following provisions apply:

(1) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevation to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in 13-02-030 (a) (1), is satisfied.

(2) Nonresidential Construction – new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that, below the base flood level, the structure is watertight with walls substantially

impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy (floodproofed). A registered professional engineer or architect shall develop and/or review structural design, specification, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(b) Located within the areas of special flood hazard established in 13-01-050 are areas designated as shallow flooding (AO/AH Zones). These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number in feet on the community's FIRM (at least three (3) feet in no depth number is specified), or

(2) All new construction and substantial improvements of non-residential structures;

(a) Have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified), or

(b) Together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy (floodproofed).

(c) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in 13-03-020 (c) are satisfied.

(d) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

13-03-030. - Flood openings.

All new construction and substantial improvements, with fully enclosed areas below the lowest floor (excluding basements), that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following criteria:

- (1) A minimum of two (2) openings, on different sides of each enclosed area, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater; or
- (2) If it is not feasible or desirable to meet the openings criteria stated above, a registered engineer or architect may design and certify the openings.

13-03-040. - Detached garages and accessory structures.

- (a) "Accessory structure" used solely for parking (two-car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in section 13-01-040 ~~030~~, may be constructed such that its floor is below the regulatory flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - (1) Use of the accessory structure must be limited to parking or limited storage;
 - (2) The portions of the accessory structure located below the regulatory flood elevation must be built using flood-resistant materials;
 - (3) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - (4) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;
 - (5) The accessory structure must comply with floodplain encroachment provisions in section 13-03-80 ~~090~~; and
- (b) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Section 13-03-030
- (c) Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in section 13-03-010.

13-03-050. - Standards for storage of materials and equipment.

- (a) The storage or processing of materials that could be injurious to human, animal or plant life if released due to damage from flooding is prohibited in special flood hazard areas.
- (b) Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning

13-03-060. - Standards for utilities.

- (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (b) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

- (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (d) Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.

13-03-070. - Manufactured homes.

All manufactured homes that are placed on site or substantially improved shall:

- (1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation;
- (2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces; and
- (3) Meet the standards in section 13-03-010.

13-03-080. - Standards for recreational vehicles.

All recreational vehicles placed on site shall:

- (1) Be on the site for fewer than one hundred eighty (180) consecutive days; or
- (2) Be fully licensed and ready for highway use; or
- (3) Meet the permit requirements of subsection 13-02-030(a), and the elevation and anchoring requirements for "manufactured homes" in subsection 13-03-010(a) 070 of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

13-03-090. - Floodways.

Located within areas of special flood hazard established in section 13-01-050 are areas such as arroyos and other channels which may be designated as floodways. Since the floodway is an extremely hazardous area, due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other developments, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
- (2) If section 13-03-030(1), above, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections (13-03-020 and 13-03-030 provisions for flood hazard reduction).

13-03-100. - Standards for subdivision proposals.

- (a) All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), shall:

- (1) Identify the area of the special flood hazard area and the elevation of the base flood
- (2) Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood elevation, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.
- (3) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.
- (d) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to other sections of this ordinance.

DONE this _____ day of _____, 2018.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/18/2018

Report No: 16.

Submitted By:

Subject: Consider, and act upon, first publication of Ordinance Number 1568 to amend the official zoning map of the City of Alamogordo and rezoning the property commonly known as 481 Michel Street with legal description of Fambrough Subdivision 2, Replat B, Lot 1-B, Case # Z-2018-0001 (A) from MH-2 Manufactured Housing Park District to R-4 Multiple Family Dwelling District (*City Planner, Darron Williams*).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Planning and Zoning is asking the City Commissioners to approve.

Background: Consider, and act upon first publication of Ordinance No. 1568 to amend the official zoning map of the City of Alamogordo and rezoning the property 481 Michele Street from MH-2 Manufactured Housing Park District to R-4 Multiple Family Dwelling District (*City Planner Darron Williams*).



City of Alamogordo

City Commission



REZONING REQUEST CASE:
Z-2018-0001(A)

Darron Williams, City Planner
April 24, 2018

P & Z Commission

April 5, 2018

Case Z-2018-0001(A) – John & Kristine
Fambrough- 481 Michel Street, Alamogordo, NM
88310

Case: Z-2018-0001(A)

Request:

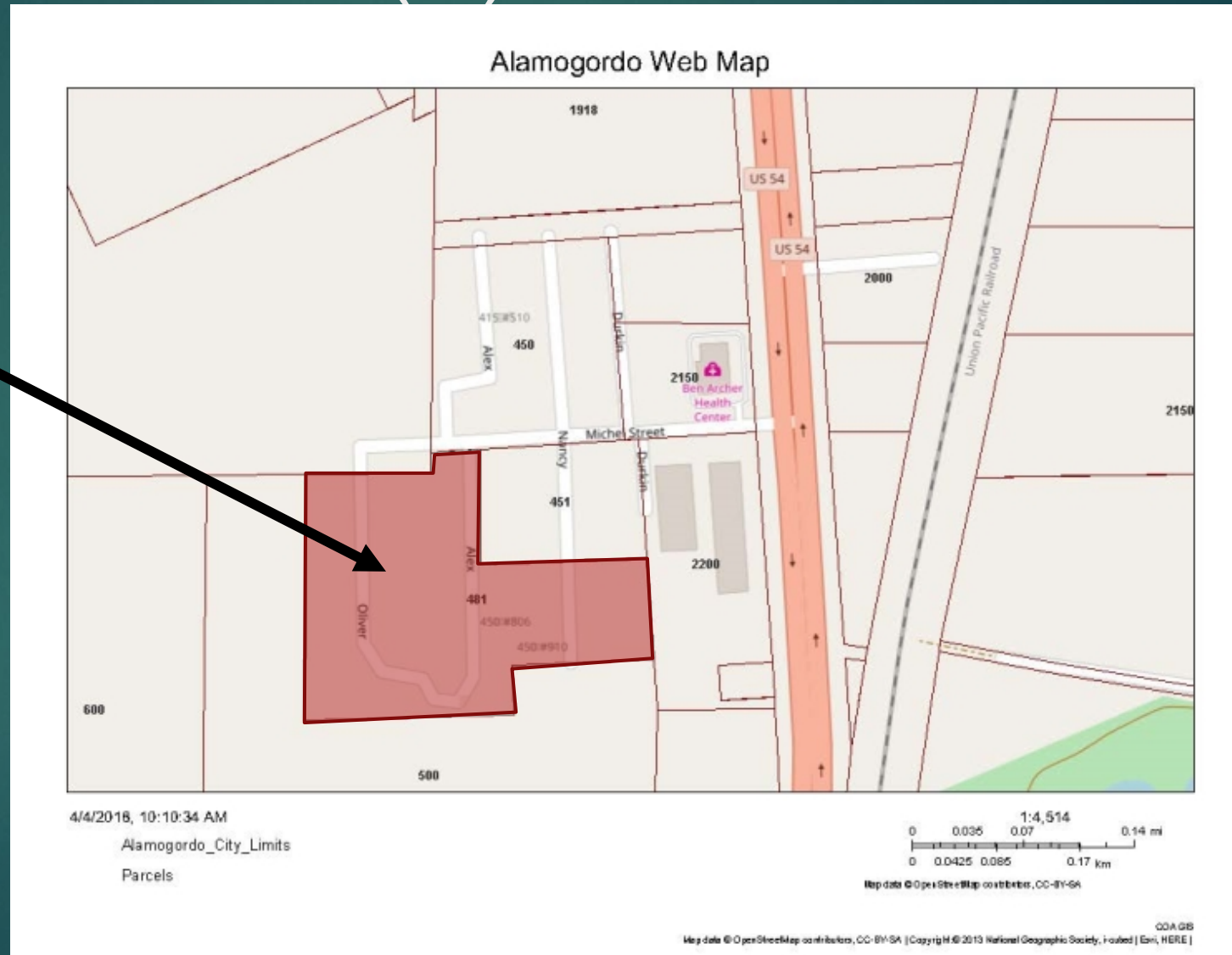
The applicant is requesting that the city amend the zoning map to change the zoning of 481 Michel Street from MH-2 to R-4; with legal description: FAMBROUGH SUBDIVISION 2, REPLAT B, LOT 1B, ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

Owner(s)/Applicant:

John & Kristine Fambrough
451 Michel St. #900
Alamogordo, NM 88310

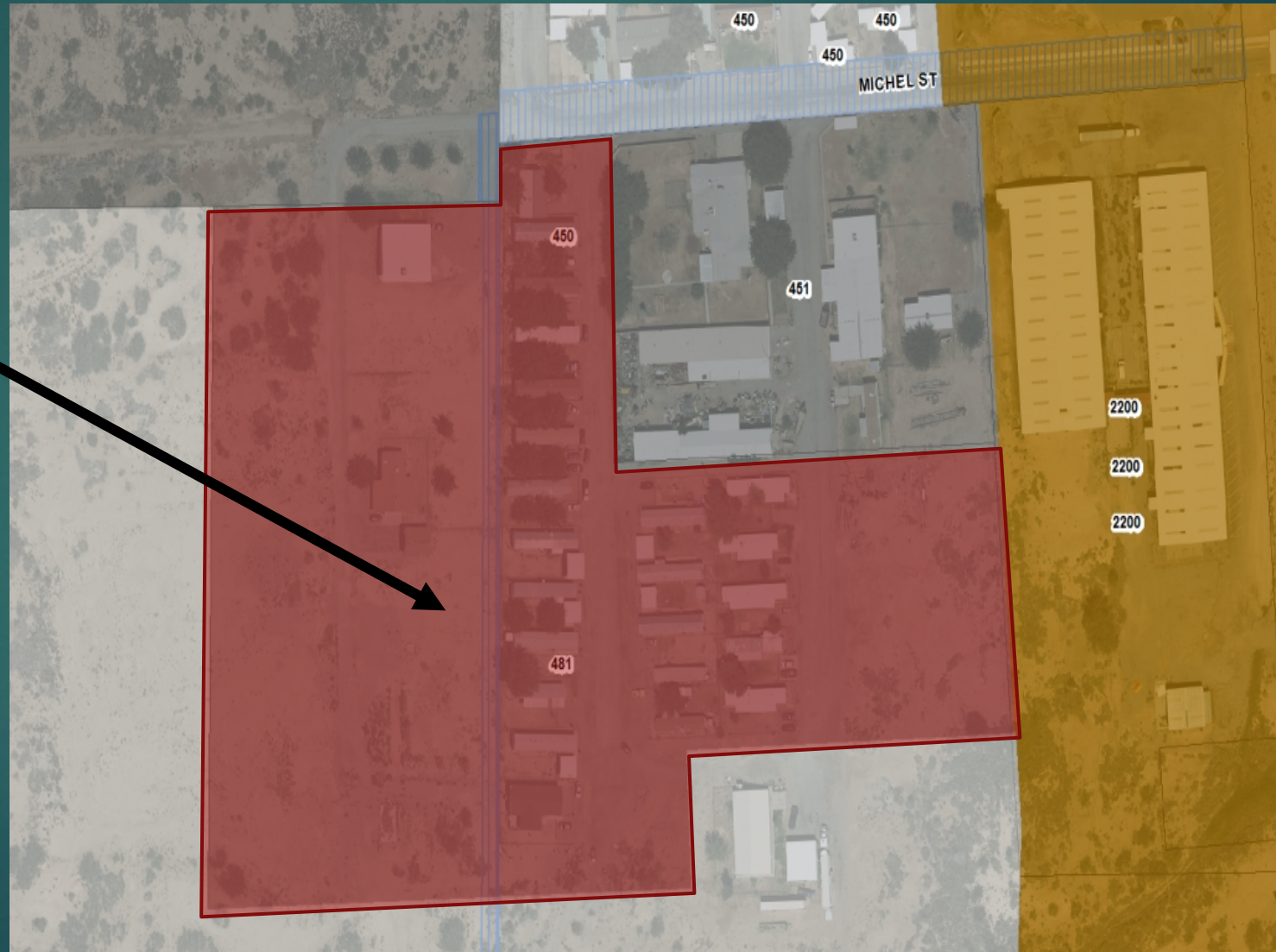
Case: Z-2018-0001(A)

Tonight's Case



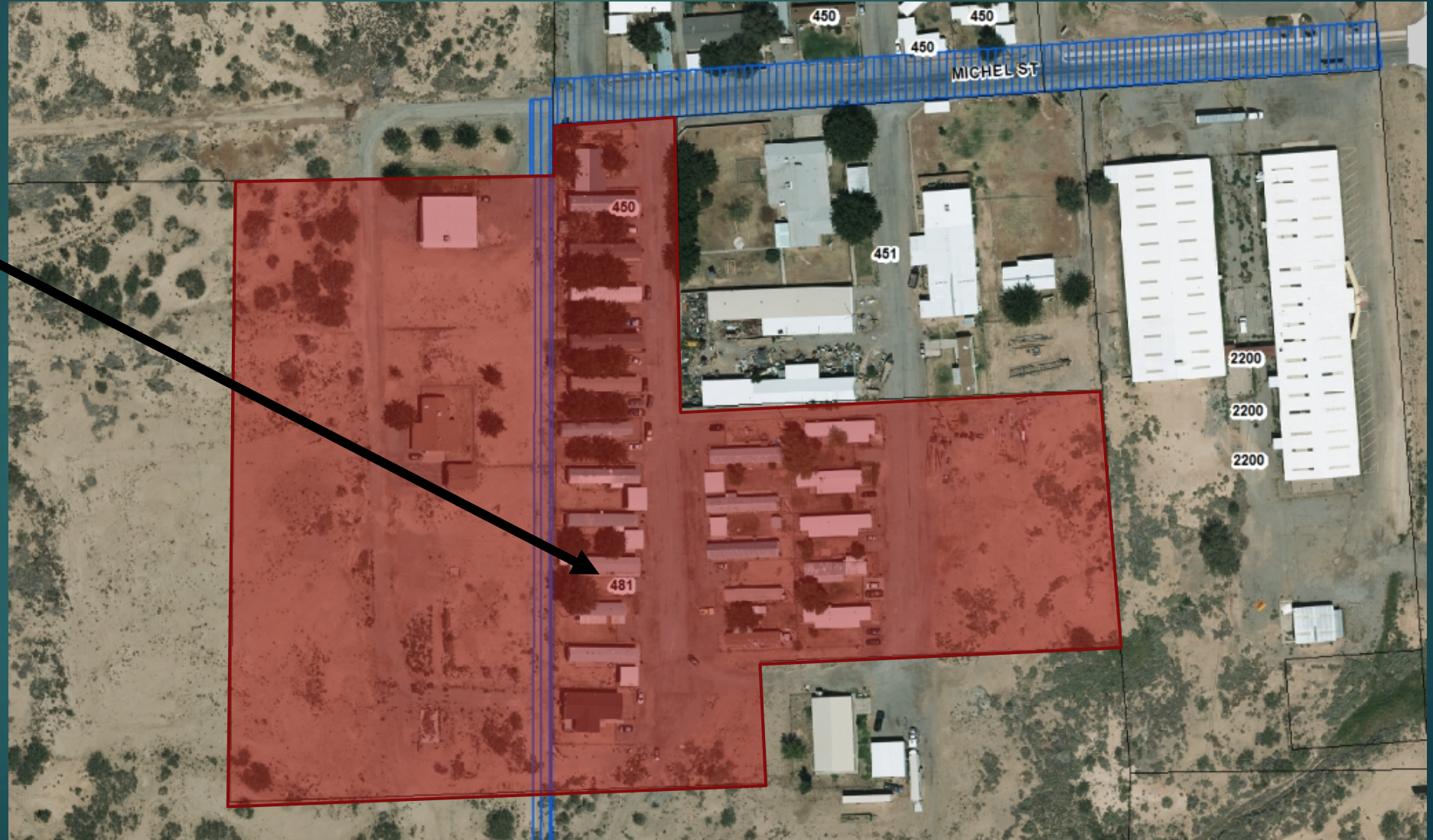
Case: Z-2018-0001(A)

Tonight's Case



Case Z-2018-0001(A)

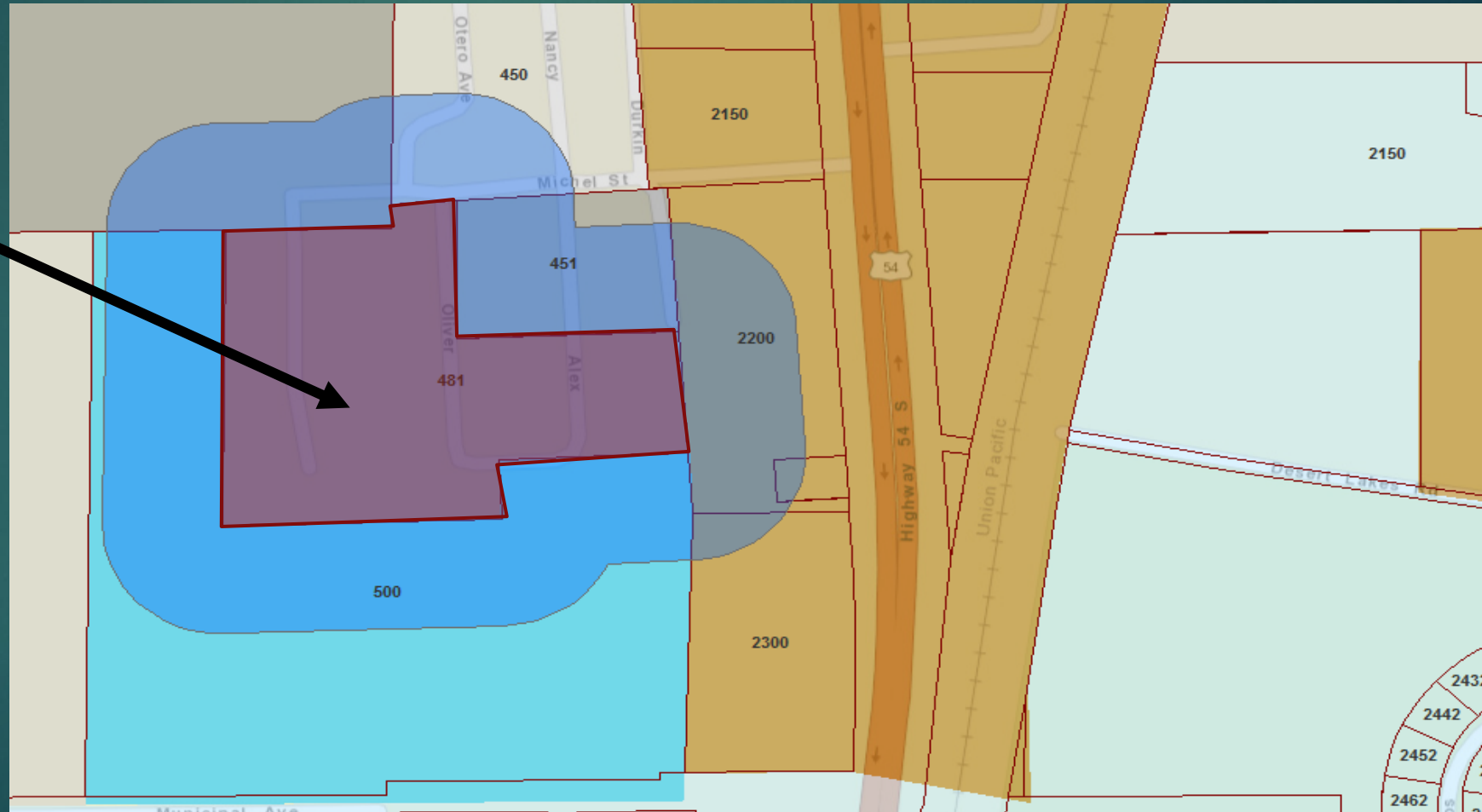
Tonight's Case



Z-2018-0001(A)

Within 200ft protest radius

Tonight's Case



Case: Z-2018-0001(A)

Findings of Fact

- ◆1. The property is located at 481 Michel Street within the city limits
- ◆2. The property is owned by John and Kristine Fambrough
- ◆3. The request is to amend the zoning map to change the zoning from MH-2 Manufactured Housing Park District to R-4 Multiple Family Dwelling District.
- ◆4. The application was filed on February 20, 2018
- ◆5. A legal notice was published March 11, 2018.
- ◆6. Three (3) letters were mailed by certified/return receipt to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property for which the zoning is sought.
- ◆7. As of today there have been no letters returned undeliverable and no phone calls or letters of protest have been received from property owners within the two hundred feet radius of the proposed zoning.

Case: Z-2018-0001(A)

Staff Recommends:

Staff recommends **approval** to City Commission.

Notice of First Publication of Ordinance No. 1568

The City of Alamogordo is considering and gives notice of an ordinance amending the official zoning map of the City of Alamogordo and rezoning property commonly known 481 Michel Street with legal description of Fambrough Subdivision 2, Replat B, Lot 1B, Case # Z-2018-0001(A) from MH-2-Manufactured Housing Park District to R-4-Multiple Family Dwelling District.

Legal Description:

Fambrough Subdivision 2, Replat B, Lot 1B

A copy of the full ordinance may be reviewed in the City Clerk's Office or provided to requester upon payment.

Date:

City of Alamogordo, New Mexico

By: Rachel Hughs, City Clerk

Notice of Adoption of Ordinance No. 1568

The City of Alamogordo is considering and gives notice of an ordinance amending the official zoning map of the City of Alamogordo and rezoning of property commonly known as 481 Michel Street with legal description of Fambrough Subdivision 2, Replat B, Lot 1B, Case # Z-2018-0001(A) from MH-2-Manufactured Housing Park District to R-4-Multiple Family Dwelling District.

Legal Description:

Fambrough Subdivision 2, Replat B, Lot 1B

A copy of the full ordinance may be reviewed in the City Clerk's Office or provided to requester upon payment.

Date:

City of Alamogordo, New Mexico

By: Rachel Hughs, City Clerk

Record of Decision
City of Alamogordo
A New Mexico Municipal Corporation

Case#: **Z-2018-0001(A)**

For the Subject Property as follows:

Commonly Known As: **481 Michel Street**

Uniform Property Code & Parcel Code: **01N-4-054-409-728-864-30**

Legal Description: **FAMBROUGH 2, REPLAT B, ALAMOGORDO, OTERO COUNTY,
NEW MEXICO**

The Alamogordo Planning & Zoning Commission considered this item on **April 5, 2018** and recommended the following action to the Alamogordo City Commission by a vote of **3-0-0**

Approve the rezoning of the property detailed above for Case # **Z-2018-0001(A)**.

.....
The Alamogordo City Commission issued the following decision on _____, by a vote of _____

Approve as recommended for first publication Ordinance # 1568

.....
The Alamogordo City Commission issued the following decision on _____, by a vote of _____

Approve as recommended for final publication Ordinance #1568 .

Attest: CITY OF ALAMOGORDO, New Mexico,
A New Mexico Municipal Corporation

Rachel Hughs, City Clerk

Richard Boss, Mayor

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: April 24, 2018

Report Date: April 9, 2018

Report

No:

Submitted By: Stella Rael

Planning & Zoning Administrator

Approved For Agenda: _____

Subject: Consider, and act upon, Ordinance 1568 for first publication for a map amendment to the official zoning map of the City of Alamogordo to rezone the property located at 481 Michel Street with legal description of Fambrough Subdivision 2, Replat B, Lot 1B, Case # Z-2018-0001(A) from MH-2-Manufactured Housing Park District to R-4-Multiple Family Dwelling District.

(Darron Williams, City Planner) **Roll Call Required**

Fiscal Impact: None

Amount Budgeted: \$ 0

Fund: N/A

Recommendation: Staff recommends approval of ordinance 1568 for first publication.

Background: The Alamogordo Daily News published notice of this hearing on March 11, 2018. Staff mailed three (3) letters by certified/return receipt mail to all property owners of record within two hundred (200) feet from the properties excluding public right-of-way, of the properties for which the rezoning is sought. As of this writing, staff has not received any letters returned as undeliverable and no written responses to this notice.

Reviewed By:

City Attorney _____ City Clerk _____ Community Development _____ Community Services _____
Finance _____ Housing Authority _____ Planning _____ Personnel _____ Public Safety _____

Public Works _____ Purchasing _____ Assistant City Manager _____

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/20/2018

Report No: 17.

Submitted By: Maggie Paluch

Subject: Consider, and act upon, Resolution 2018-22 affirming support for the White Sands National Park Establishment Act. (*Maggie Paluch, City Manager*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve Resolution 2018-22

Background: Affirming support for the White Sands National Park Establishment Act.

RESOLUTION NO. 2018-22

A RESOLUTION AFFIRMING SUPPORTING FOR THE WHITE SANDS NATIONAL PARK ESTABLISHMENT ACT.

WHEREAS, the City of Alamogordo is proud to be the gateway community to White Sands National Monument; and

WHEREAS, White Sands National Monument is enjoyed by Alamogordo residents and others for its spectacular scenery and unique recreational and educational opportunities; and

WHEREAS, the City of Alamogordo is continually working to improve quality of life for its residents, expand opportunities for its businesses, and raise awareness of what the City has to offer residents, the service members, and visitors; and

WHEREAS, White Sands National Monument was established in 1933 to preserve the largest gypsum dunefield in the world; and

WHEREAS, in recent years, a number of exceptional, nationally significant discoveries have been made in White Sands National Monument, and these discoveries qualify White Sands National Monument as a national park; and

WHEREAS, elevating White Sands National Monument to national park status will provide more appropriate recognition of its diverse array of remarkable resources, including those intimately intertwined with the history of Alamogordo and the Tularosa Basin; and

WHEREAS, the economy of the City of Alamogordo is heavily reliant on Department of Defense installations, the City is working to diversify its economy, and growing tourism is an important way through which to further diversify; and

WHEREAS, 2016 was the centennial of the National Park Service and visitors around the world are taking new interest in experiencing National Park Service units; and

WHEREAS, since 1995 White Sands National Monument has been the most visited unit of the National Park Service in New Mexico; and

WHEREAS, in 2016 visitor spending at White Sands National Monument supported over 430 jobs and \$33.6 million in economic impact to the local economy, and spending by non-local visitors generated over ninety eight percent of this impact; and

WHEREAS, monuments that become national parks tend to draw more visitation; and

WHEREAS, the City of Alamogordo is home to other attractions that can benefit from increased public awareness of the monument once it becomes White Sands National Park; and

WHEREAS, the City of Alamogordo values the critical contributions of the military missions in our region to the national security of our nation and will continue to support those missions; and

WHEREAS, White Sands Missile Range and White Sands National Monument have been working to exchange lands to simplify management since the 1970s, and the White Sands National Park Establishment Act would complete an updated land exchange which creates new opportunities to enhance the visitor experience and fulfill of elements of White Sands Missile Range's Thirty Year Strategic Plan; and

WHEREAS, the provisions of the White Sands National Park Establishment Act: provide reasonable and practical flexibility to the Army for meeting statutory obligations with respect to legacy munitions; preserve the Department of Defense's ability to execute military missions now and in the future at White Sands Missile Range, Holloman Air Force Base, and Fort Bliss; and safeguard the Department of Defense's jurisdiction over and use of its restricted airspace; and

WHEREAS, the White Sands National Park Establishment Act will bring White Sands National Monument the prestige and attention it deserves through redesignation of the monument as a national park, increase the economic impact of tourism, and enhance the operations of White Sands National Monument and White Sands Missile Range.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION:

Section 1. That the City of Alamogordo supports the White Sands National Park Establishment Act; and

Section 2. That the City of Alamogordo respectfully requests that Congress work to pass the White Sands National Park Establishment Act in the 115th Congress.

DONE this 24th day of April, 2018.

ALAMOGORDO CITY COMMISSION
A New Mexico Municipal Corporation

By _____
Richard Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 04/24/2018

Report Date: 04/02/2018

Report No: 18.

Submitted By: April Jones

Subject: Appointments to Boards and Committees. (*Richard Boss, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Mayor's Committee on Aging.

Background: Airport Zoning Board. Three (3) vacancies. Staff Liaison - Cheryl Otero-Baker
No nominations received.

Alamogordo Disability Council. Three (3) vacancies. Staff Liaison - **No Staff Liaison appointed**
No nominations received.

Alamogordo Promotion Board. No vacancies. Staff Liaison - Michelle Brideaux

Alamogordo Public Library Board. Two (2) vacancies - one (1) city position and one (1) county position.
Staff Liason - Melissa Garcia.
No nominations received.

Community Development Advisory Committee. Six (6) vacancies. Staff Liaison - Cynde Sagenkahn
No nominations received.

Mayor's Committee on Aging. One (1) vacancy. Staff liaison - Britney Courtier.
(Opening due to the expired term of Teresa Carr)
The following individual is interested in being appointed:
Carol Smith - If appointed this will be her first term.

Parks and Recreation Board. One (1) vacancy. Staff Liason - Jan Wafful.
No nominations received.

Planning and Zoning Committee. No vacancies. Staff Liaison Stella Rael.

Senior Volunteer Programs Advisory Council. Three (3) vacancies. Staff Liaison - Neil McFarland. (One vacancy represents the Foster Grandparent program, one represents the Senior Companion program, the remaining seat is an at large member residing within the city)
No nominations received.

APR 06 2018

CITY CLERK

City of Alamogordo

APPLICATION TO SERVE ON A CITY BOARD/COMMITTEE

Name: Carol SmithHome Phone: 575 434 6537 Work Phone: _____

Cell Phone: _____ Fax No: _____

Email Address: yubetcha2009@hotmail.comIs the above Address within City limits? Yes ☒ No _____Mailing Address: 1604 Bellamah Dr, AlamogordoPresent Employer: Retired

Board/Committee you wish to serve on:

1st Choice: Mayor's Committee on Aging ☐2nd Choice: Senior Volunteer Programs Advisory Council ☐

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes _____ No ☒ If so, what is their relation to you: _____

Are you related to any Elected Official of the City of Alamogordo?

Yes _____ No ☒ If so, what is their relation to you: _____

Experience and education relating to the Board/Committee:

Mainly....Life!

Please indicate your interest in serving on a City Board/Committee:

I wish to give back to my community.**Please return completed application to:**

City Clerk's Office
1376 E Ninth Street
Alamogordo, NM 88310
Phone: (575) 439-4205 Fax: (575) 439-4396
Email: adjones@ci.alamogordo.nm.us