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Article 14-6: PERMITTED USES AND USE REGULATIONS

14-6.1 LAND USE CATEGORIES; TABLE OF PERMITTED USES

(A) Land Use Categories

(1) Table 14-6.1-1 below sets forth the uses allowed and prohibited within the general use zoning districts and the AC overlay zoning district.

(2) The descriptions and categorizations of land uses are intended for convenience in classifying specific land uses, but are not intended to be exhaustive or mutually exclusive descriptions of all possible specific uses.

(3) These regulations are based on the patterns of development and physical activities that comprise the principal and accessory uses of land, rather than on whether the activity is conducted for profit, non-profit or other purposes.

~~Table 14-6.1-1 below sets forth the uses allowed within the general use zoning districts.~~

(BA) Allowed and Prohibited Uses; Explanation of Table Abbreviations

(1) Permitted Uses

A "P" in a cell indicates that a use category is allowed by right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this Ordinance Chapter, including the Development and Design Standards set forth in Article 14-8. Permitted uses may be required to obtain approval of a development plan by a land use board or the Governing Body as provided in §14-3.8 or in §14-4.

(2) ~~Special Exceptions~~ Special Use Permits

An "S" in a cell indicates that a use category is allowed only if reviewed and approved as a ~~special exception~~ special use permit, in accordance with the review procedures of §14-3.6.

(3) Accessory Uses

An "A" in a cell indicates that a use category is allowed as an accessory use as described in §14-6.3.

(4) Prohibited Uses

Comment [CLG1]: confirm same changes in table

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_____ A blank cell indicates that the use type is prohibited in the zoning district. Any use or structure not specifically or ~~provisionally~~ specifically permitted herein is prohibited and any use or structure which the Board of Adjustment, ~~on appeal and after investigation of similar uses or structures elsewhere, shall determine to be potentially noxious, dangerous or offensive to residents of the district or those who pass on public ways, by reason of odor, smoke, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with audio or television reception, or radiation, or likely for other reasons to be incompatible with the character of the district.~~

Comment [CLG2]: This process is not used, and unnecessary

_____ (54) Additional Regulations

_____ Regardless of whether a use is permitted by right or as a special ~~exception~~ use permit, there may be additional regulations that are applicable to a specific use. The existence of these use-specific regulations is noted through a reference in the last column of the use summary table entitled "Additional Regulations." References refer to §14-6.2 "Use-Specific Standards." These regulations apply to all districts unless otherwise specified.

Comment [U3]: The final version of the table will have the references for use-specific regulations listed next to the respective types of uses, where they are less likely to be overlooked.

_____ (65) Uses Not Listed in Table

_____ Any specific use type not listed or included in the Table of Permitted Uses shall be prohibited unless the Land Use Director determines that it is to be included in an existing use category.

_____ (CB) Table of Permitted Uses

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14-6.2 USE-SPECIFIC STANDARDS

(A) Residential Uses

(1) Continuing Care Community

~~A continuing care community shall be approved by the Board of Adjustment if it complies with the requirements of this section and any other applicable requirements of this chapter and if the particular continuing care community proposed will not adversely affect the public's health, safety, or welfare. The Board of Adjustment shall impose such conditions on development of a continuing care community as are appropriate to protect adjoining and nearby property owners from adverse impacts or to protect the public's health, safety, and welfare;~~

(a) Density

~~Independent dwelling units shall be allowed~~are at a density of ~~29 units per acre~~subject to the density standards of the district in which the continuing care community is located;

(b) Compliance with State and Federal Law

~~Continuing care facilities must comply with a~~All state and federal statutes governing the facility shall be complied with prior to issuance of a certificate of occupancy;

~~(c)~~ Application

~~Applicants for a continuing care community special exception shall submit an application and site plan to the Board of Adjustment which shall include all of the following information:~~

~~(i) The identity of the property owner(s), contract vendees (if any), and evidence of unified control of the property on which the special exception is proposed;~~

~~(ii) A site plan covering the entire property upon which any part of the proposed special exception conditional use permit will be located, which shows:~~

~~A. The topography of the property at two foot contour intervals;~~

~~B. All arroyos, existing drainage, land with a slope of 20 percent or greater; and any other significant natural features;~~

~~C. The size, arrangement, and dimensions of all proposed buildings and their uses;~~

Comment [CLG4]: These requirements are non-specific and will be addressed by the Land Use Director

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~~D. All existing uses and development of adjoining properties for an area at least 200 feet beyond the boundaries of the property on which the special exception conditional use permit is proposed to be located;~~

~~E. All open space areas;~~

~~F. All parking areas, off street loading areas, all streets, all internal automotive and pedestrian circulation routes, all automotive and pedestrian means of ingress and egress to the property from adjoining properties of streets;~~

~~G. All gas, water, electric, sewer, telephone, cable television, and any other utility lines, easements and facilities;~~

~~H. The location, size, and type of all drainage systems; fences and walls, signs, and exterior lighting;~~

~~I. All landscaping;~~

~~J. All other improvements on the property;~~

~~K. All phases and time of sequential development if all of the improvements are not proposed to be developed at one time; and~~

~~L. Any other information required by the Land Use Department or the Board of Adjustment in order to determine whether the proposed special exception is in compliance with this chapter.~~

 (2) Group Home

 (a) ~~All state licensing requirements for such facilities shall be met and~~ The applicant must provide a current state license ~~and City shall be issued.~~

 (b) ~~A business license shall be secured from the City.~~

 (3) [RESERVED]

 (4) Mobile Home, Permanent Installation

 In any district where permanent single-family occupancy of a mobile home on an individual lot is permitted as a ~~special exception~~ special use permit by the Board of Adjustment, the following minimum standards ~~shall~~ apply:

Comment [CLG5]: The City can ask for a license, and assume by licensure that all standards are met, without being in the position of enforcing state requirements.

Comment [CLG6]: This is a requirement for all businesses - is there any reason to specifically call it out here?

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_____ (a) ~~The construction of the mobile home shall comply with the Mobile Housing Act, §§ 60-14-1 through 60-14-5 NMSA 1978;~~

_____ (b) The manufactured home-unit shall be anchored to a concrete foundation and skirted as specified by the ~~Inspections and Enforcement Office~~ Land Use Director;

_____ (c) The rental or lease of mobile homes used as single-family residences on individual *lots* ~~shall be~~ is prohibited; and

_____ (d) Minimum requirements for *lot* size, front, side and rear yards, and all other standards pertaining to single-family residential land use set forth in this chapter ~~shall apply~~ is.

(5) Mobile Home Park

_____ (a) Applicability

_____ In any district in which mobile home parks are permitted, the minimum standards set out in this section ~~shall~~ apply.

_____ (b) License

_____ Prior to beginning operation, a mobile home park owner or operator must obtain a business license from the City under the provisions of §18-1, "Business Licenses."

_____ (c) Inspection

_____ The City ~~shall have~~ has the authority to inspect any mobile home park for conformance with the provisions of this section.

_____ (d) Transfer of License

_____ The City may issue a transfer of the license only after the following:

_____ (i) Application in writing for transfer of a license and payment of the transfer;

_____ (ii) An inspection report by the ~~appropriate City staff~~ Land Use Director has been submitted to the Governing Body, stating conformance or nonconformance with the provisions of this section;

_____ (iii) Approval by the Governing Body ~~of the City~~.

Comment [CLG7]: should Clarion access provision be included?

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 (e) Revocation of License

 The Governing Body may revoke any license to maintain and operate a mobile home park, as provided by §18-1, "Business Licenses," when the licensee ~~has been~~ is found to be in violation of any provision of this section.

 (f) Posting

 The license certificate shall be conspicuously posted in the office of or on the premises of the mobile home park at all times.

~~(g) — Permit~~

~~(i) — Application for a mobile home park permit shall be filed with the Inspections and Enforcement Office. The application and all accompanying plans and specifications shall be filed in triplicate.~~

~~(ii) — The appropriate City staff shall review the application and the proposed plans and specifications. All plans shall be in accordance with §14-6.2(A)(5)(i).~~

~~(h) — Nonconforming Uses of Land~~

~~Where, at the effective date of the adoption or amendment of this section, lawful use of land exists that is made no longer permissible under the terms of the amendment, involving no individual structures with a replacement cost exceeding 500 dollars, such use may be continued, as long as it remains otherwise lawful, subject to the following provisions:~~

~~(i) — No such nonconforming use shall be enlarged, intensified or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the amendment;~~

~~(ii) — No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the amendment;~~

~~(iii) — If any such nonconforming use of land ceases for any reason for a period of more than 60 days, any subsequent similar use of such land shall conform to the provisions specified by this section;~~

~~(iv) — No additional structure not conforming to the requirements of this article shall be erected in connection with such nonconforming use of land; and~~

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~~(v) — Any portion of a mobile home park, existing at the effective date of Ordinance No. 1962-19 and not conforming to requirements contained herein, shall be brought into conformance no later than five years from such date, with the following exceptions:~~

~~A. — That within mobile home parks existing at the effective date of Ordinance No. 1962-19, the minimum lot size shall not be less than that prescribed by mobile home park regulations set forth by the state; and~~

~~B. — That within mobile home parks existing at the effective date of Ordinance No. 1962-19, the continuance of lot sizes less than those specified by this section may be permitted at the discretion of the planning committee, where it is shown upon inspection that such continuance does not threaten the health and safety of residents of the park.~~

~~_____ (g) — Standards~~

~~_____ (i) — Before application for a mobile home park permit is approved, the developer shall submit to the Land Use Department Director an overall development plan showing proposed land uses for the entire area defined in the mobile home park application. The plan shall be in accordance with the provisions of this section, including the minimum site acreage of two acres. If found to be in conformance with these requirements, the plan shall be submitted to the Planning Commission.~~

~~(ii) — The plan shall delineate adequate open space and park area in accordance with the minimum requirements of five acres per 1,000 residents set forth in the land subdivision regulations of the City.~~

~~(iii) — The mobile home park shall be located on a well drained site and graded to ensure proper drainage of the site.~~

~~(iv) — The mobile home park shall provide spaces that are well defined and delineated. Minimum lot size per mobile home unit shall be 4,000 square feet.~~

~~(v) — Each mobile home space shall provide a mobile home stand of concrete footing adequate to support the mobile home unit. Stand and space shall be graded to provide adequate storm drainage away from the mobile home unit.~~

~~(vi) — A maximum of eight mobile home spaces per gross acre shall be allowed in any mobile home park.~~

~~(vii) — Mobile homes shall be so located on each space that there shall be at least a 20-foot clearance between mobile homes; provided, that with respect to mobile homes parked end to end, the end to end clearance may not be less than 20 feet. No mobile home shall be located closer than ten feet to any building within the park or to any property line of the park that does not abut upon a public street or highway. No mobile~~

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C. — Access into a paved, dedicated public street.

~~(k)~~ — Service Buildings

(i) — Service buildings, if provided, housing sanitation facilities, shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems.

(ii) — The service buildings shall be well lighted at all times of the day and night, shall be well ventilated with screened openings, shall be constructed of such moisture proof material, which may be painted woodwork, as shall permit repeated cleaning and washing, and shall be maintained at a temperature of at least 68 degrees Fahrenheit during the period from October 1 to May 1. The floors of the service buildings shall be of water impervious material.

(iii) — All service buildings and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any condition that will menace the health of any occupant, or the public, or constitute a nuisance.

(l) — Garbage Receptacles

~~Metal garbage cans with tight fitting covers shall be provided in quantities adequate to permit disposal of all garbage and rubbish. Garbage cans shall be located on the mobile home space or in a specified central location to facilitate maintenance and pick up. The cans shall be kept in sanitary condition at all times. Garbage and rubbish shall be collected and disposed of as frequently as may be necessary to ensure that the garbage cans shall not overflow.~~

(m) — Fire Protection

~~Every park shall be equipped at all times with fire extinguishing equipment in good working order, of such type, size and number and so located within the park as to satisfy applicable reasonable regulations of the fire department.~~

(n) — Supervision

~~The licensee or a duly authorized attendant or caretaker shall be in charge at all times to keep the mobile home park, its facilities and equipment in a clean, orderly and sanitary condition. The attendant or caretaker shall be answerable, with the licensee, for the violation of any provision of this section to which the licensee or permittee is subject.~~

 (6) Manufactured Homes

 Manufactured homes:

Comment [CLG9]: relocated to 14-7

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_____ (vii) Administrative Procedures

_____ The Land Use Director shall establish administrative procedures ~~as are necessary~~ for the implementation, management and enforcement of §14-6.2(A)(6)(a).

~~(viii)~~ Review and Report; Amendments

Comment [CLG10]: outdated

~~Staff shall make a report to the Governing Body regarding the implementation, management, enforcement and fiscal impact of §14-6.2(A)(6)(a) prior to July 31, 2009 (18 months from the adoption of this Ordinance). Upon evaluation of the information, the Governing Body shall consider amendments to the City code regarding short term rental units including, but not limited to, alternative zoning provisions such as neighborhood conservation districts and special overlay districts regulating short term rentals in residential districts.~~

_____ (b) Nonresidentially Zoned Property.

_____ Short term rental units are permitted as set forth in Table 14-6.1-1.

~~(e)~~ 8. Dwelling Units in Specified Commercial Districts.

_____ In the C-2, BIP and SC Districts, dwelling units ~~shall~~ do not include mobile homes or recreational vehicles, and shall be either: ~~be~~

_____ (i) accessory dwelling units for occupancy only by owners, employees, or tenants of nonresidential uses that are operated on ~~allowed in the C-2 District and which are part of the same building~~ premises, or

_____ (ii) which are a part of a planned development; or

_____ (iii) part of a use for which a development plan or special use permit is required, ~~and do not include mobile homes or recreational vehicles.~~

_____ **(B) Public, Institutional, and Civic Uses**

_____ (1) Cemeteries, Mausoleums and Columbariums

_____ The total lot area ~~shall~~ may not be less than ten acres.

_____ (2) Residential Colleges and Universities

_____ The total lot area ~~shall~~ may be not less than ten acres. Minimum street frontage ~~shall~~ may not be less than 300 feet.

Comment [U11]: May be appropriate to delete minimum lot size. Additional control over siting will be provided by special use permit requirement.

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 (3) Hospitals and Extended Care Facilities

(a) ~~All Zoning Districts Except the Las Soleras HZ District~~

(i) ~~Facilities with fewer than 50 beds shall have a lot area of at least two acres, and all structures in connection with such facilities shall be at least 25 feet from any lot line.~~

(ii) ~~Facilities with over 50 beds shall have a lot area of at least five acres, and all structures in connection with such facilities shall be at least 50 feet from any lot line.~~

(iii) ~~Applicants for a special exception allowing a hospital and extended care facility shall submit to the Board of Adjustment a master plan covering the entire tract proposed for development and indicating existing conditions and development for an additional area at least 200 feet from tract boundaries. This master plan shall indicate topography at two foot contour intervals, and shall show existing drainage or other significant natural features. Any proposed fee simple lots shall be shown and shall be in conformance with the City subdivision regulations.~~

(iv) ~~This master plan shall show, with appropriate dimensions, arrangement of buildings and their uses; off street parking and loading facilities; open space; internal automotive and pedestrian circulation ingress and egress from adjoining streets; service areas and facilities; drainage system; landscaping; fences and walls; the size, location, orientation and type of all signs proposed; and proposed lighting of the premises and relation to all property within 200 feet of the tract. If it is proposed to develop the master plan in phases, the phases and time of development shall be indicated, along with any other information requested by the Land Use Department.~~

(v) ~~This plan shall show the identity of property owners and evidence of unified control of property with the proposed development.~~

(b) Business and Industrial Park District

Hospitals in the BIP District ~~shall~~ may not be located less than ~~50~~ fifty feet from the boundary of any residential use or residential zoning district, and shall comply with all other requirements in paragraph (a) above.

(be) Las Soleras Hospital Zone District

A hospital and a heliport serving a hospital shall comply with paragraphs (a)(i) and (a)(ii) above and requires a development plan as set forth in §14-4.3(D)(4).

(4) Human Services Establishments

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Open space shall be provided as per §14-7.1(B)(1)(c)(ii) for each lodging unit that contains kitchen facilities.

- (5) Private Day-Care Nurseries and Kindergartens
 - (a) Standards

All private day-care nurseries and kindergartens shall meet all state licensing requirements and shall obtain a state license and a business license from the City. In addition, all such uses shall comply with the standards set forth in the following table. Whether or not such a use is allowed by right or as a ~~special exception~~ special use permit is indicated in Table 14-6.2-1.

TABLE 14-6.2-1: Standards for Private Day-Care Nurseries and Kindergartens				
Procedure	Capacity			
	Small (6 or less)	Medium (7 to 15)	Large (15-25)	Very Large (more than 25)
PERMITTED V. SPECIAL EXCEPTION: DESIGNATION BY PLANNING COMMISSION				
The facility is a permitted principal use; designation not required.	X	X	-	-
The facility is a permitted principal use so long as it is located within the C-1 and C-2 Districts or so long as the lot on which the use is to be located has been designated by the Planning Commission for such use pursuant to paragraph(b) below. The use is allowed as a special exception without designation.	-	-	X	-
The facility may be allowed as a special exception; with or without Planning Commission designation. (Except in the C-1 and C-2 Districts, the facility is a permitted principal use without designation by the Planning Commission.)	-	-	-	X
The facility may be allowed as an accessory use if authorized under §14-6.3 and so long as the facility complies with the standards of this table.	X	X	X	-
Permission for a more intense use permitting additional children shall only be granted if such is approved by the Board of Adjustment as a special exception.	X	X	X	-
PHYSICAL STANDARDS				
Off-street parking of one space for each ten persons, or part thereof, is provided;	-	X	X	X
In residential districts, no major alterations to the structure which would prevent its use as a residence in the future, shall be allowed;	-	X	X	-
Recreation areas shall be fenced and protected from hazards of street traffic; activities out-of-doors shall take place within fenced area;	-	X	X	X
Play areas are fenced and protected from the hazards of street traffic and all activities out-of-doors are conducted within the fenced area. If the fenced around the play areas is not built of a solid wall	-	X	X	X

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<u>TABLE 14-6.2-1: Standards for Private Day-Care Nurseries and Kindergartens</u>				
<u>Procedure</u>	<u>Capacity</u>			
	<u>Small (6 or less)</u>	<u>Medium (7 to 15)</u>	<u>Large (15-25)</u>	<u>Very Large (more than 25)</u>
<u>material, appropriate landscaping establishing a complete visual barrier within 2 years of installation is required.</u>				
<u>Additional siting and landscaping requirements for the play area, or a landscaped buffer no less than 10 feet wide in any dimension and establishing a complete visual barrier within 2 years of installation, shall be required to alleviate increased noise;</u>	-	-	X	X
<u>No more than one sign, one square foot in area, hung flush to the fence or wall of the structure shall be allowed to advertise the existence of the facility.</u>	-	X	X	X
<u>ACTIVITY STANDARDS</u>				
<u>No outdoor activities for the children shall be allowed before 8:00 a.m. or after 6:00 p.m.;</u>	-	X	X	X
<u>Outdoor group play of children shall be supervised at all times to control excessive noise.</u>	-	X	X	X
<u>COMPLAINT PROCEDURE</u>				
<u>Complaints about operation shall be determined by the City zoning inspector's office after inspection and the facility given 30 days' written notice to remedy complaint;</u>	-	X	X	X
<u>Should the operator fail to remedy the complaint within 30 days after written notice, the Governing Body, after notice to and opportunity of the facility's operator to be heard, may revoke the license to operate the facility.</u>	-	X	X	X

~~(b) — Required by Planning Commission~~

~~(i) — The Planning Commission may require that a lot be set aside for use as a day care center or preschool. In making this requirement, the Planning Commission shall consider the following criteria:~~

~~A. — The number of day care centers or preschools within a one-half mile radius of the proposed development;~~

~~B. — The need for a day care center or preschool by residents within a one-half mile radius of the proposed development; and~~

~~C. — The suitability of the development with regard to lotting pattern, terrain and surrounding traffic circulation to accommodate a day care center or preschool.~~

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~~(ii) — The Planning Commission may require that a day care center or preschool be provided for any development containing more than 50 fifty dwelling units on the lot set aside under paragraph (B)(5)(b)(i) of this section. The following conditions shall be met:~~

~~A. — The Planning Commission shall consider the criteria set forth in paragraph (B)(5)(b)(i) of this section;~~

~~B. — The lot designated for a day care center shall be actively marketed for sale as a day care site;~~

~~C. — The developer shall inform all buyers of homes or lots in the development of the location of the day care site and it shall be so noted on the land development plat;~~

~~D. — If, after 24 twenty four months from the date of the footing inspection by a building inspector for the first house in the development, construction for a day care center has not begun in the lot designated for a day care center, then the designated lot may be used for residential purposes. If a residential dwelling is constructed on the lot designated for a day care center, the dwelling may be converted at any time to a day care center. However, in phased developments, the 24 twenty four month time period will begin at the time of the footing inspection for the construction of the first home within that phase in which the day care center is proposed.~~

~~(6) — Schools~~

~~(a) — Public and Private Schools~~

~~In the C 2 district, such facilities may be allowed provided that the following requirements are met:~~

~~(i) — The minimum lot area is not less than two acres;~~

~~(ii) — A minimum fenced recreation area of at least 4,000 square feet is provided, with 200 square feet of fenced recreation area per student being accommodated;~~

~~(iii) — One off street parking space shall be provided for each 2,000 square feet of gross floor area in buildings; and~~

~~(iv) — In addition to the requirements above, the facility shall meet the requirements of any board, commission or other agency or department of the state or the county that is legally charged with the responsibility of regulating schools.~~

~~(b) — Private Schools~~

~~Private schools shall have curricula similar to conventional public school curricula, and shall meet the following minimum site requirements:~~

Comment [U12]: These requirements seem to be overly restrictive, consider for elimination. Lot size, in particular, is often granted a variance for small new schools.

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TABLE 14-6.2-2: Private School Site Requirements		
School Type	Minimum Site Size (acres)	Minimum Yard (feet)
<u>Elementary</u>	<u>5</u>	<u>25</u>
<u>Secondary</u>	<u>10</u>	<u>50</u>

(67) Sheltered Care Facilities

(a) The ratio of the floor area to *lot* area is no greater than 0.4;

(b) The ~~setback from the lot line~~ required yard on all sides ~~shall be~~ is ~~twenty five~~ 25 feet. However, if a solid masonry *wall* is built around the perimeter of the property, then the ~~setback~~ yard may be five feet;

(c) Open space shall equal 100 percent of the heated floor area. Open space shall not include parking area, streets, driveways, heated space, garages, carports, or accessory buildings; open space shall not measure less than 15 feet in any of its dimensions, shall be noted as open space on the plat; and shall meet all other requirements for common open space as per §14-8.4(H);

(d) No more than one sign, one square foot in area, hung flush to the fence or wall of the structure shall be allowed to advertise the existence of the structure;

(e) Complaints about operation shall be determined by the ~~City zoning inspector's~~ Land Use Director office after inspection and the facility given ~~30~~ thirty days written notice to remedy the complaint. Should the operator fail to remedy the complaint within ~~30~~ thirty days after written notice, the Governing Body, after providing notice to the facility's operator and, an opportunity of the facility's operator to be heard, may revoke the license to operate the facility;

(f) All sheltered care facilities shall be licensed by the state;

(8) Public or Private Utilities

(a) For the purpose of this chapter, shall include: a gas regulator station, telephone exchange, water or sewage pumping station or a water storage facility.

(b) The *lot* area, screening against light, fumes, noise or unsightliness, protection against unattractive nuisance characteristics and protection against interference with radio and television reception shall be as required by the Board of Adjustment.

(c) Telecommunication facilities are subject to §14-6.2(E).

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(d) Electric facilities are subject to §14-6.2(F).

(C) Commercial Uses

(I) Adult Entertainment Facilities

(a) Purpose

In adopting this section, it is recognized that businesses that provide certain types of adult entertainment, wherever and by whomever provided, may provide services or goods that have certain characteristics which can have deleterious effects on the public health, safety, or general welfare. It is recognized that the location of adult entertainment, whether in commercial buildings or private homes, is of interest to the City of Santa Fe since there may be exposure of such adult services and/or goods to minors. In addition, it is recognized that many persons are offended by the display of certain sexual acts and/or materials, by the appearance of nude or partially nude persons exposing parts of the body which customarily would be covered in public and which include private body parts of either males or females and the female breast portion showing the areola, and which persons are providing adult entertainment services or material. Regulation of adult entertainment through the police power of a municipality is reasonable, necessary and appropriate for the benefit of the public welfare and to insure that adverse effects will not contribute to the blighting or downgrading of neighborhoods, commercial districts or public facilities and will not adversely affect minors. It shall not be a deprivation of property to prohibit, limit, or otherwise regulate adult entertainment as provided herein.

Comment [CLG13]: this was removed from 14-4 SC: "All sales, service, storage, and display shall be within completely enclosed buildings and no goods shall be produced except for sale at retail on the premises." - should it be located here?

Comment [CLG14]: adult businesses are subject to various constitutional limitations on regulation, and this section is seldom used, so changes are minimal and non-substantive.

(b) Location of Sexually Oriented Businesses, ~~Adult Bookstores, Movie Theaters and Newsracks~~

(i) No sexually oriented business shall be located or presented in a residential district, even temporarily, nor within 1,000 feet of a district zoned for residential uses, or a district in which single-family or multi-family dwellings are permitted as principal uses and structures or within 1,000 feet of any parcel of real property on which is located any of the following facilities:

- A. A school, academy, center, or other entity which provides instruction primarily for and attended by minors;
- B. A religious institution that conducts religious services, education classes, or other gatherings for minors;
- C. A public park, playground, or public recreation facility;
- D. Eating and drinking establishments;
- E. Hotels, motels, rooming and boarding houses;

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F. Commercial recreational uses and structures, such as theaters, bowling alleys;

G. Private day-care nurseries and kindergartens; or

H. Libraries.

(ii) This section does not apply to sexually oriented businesses existing at the time of adoption of this section. Such businesses shall be considered nonconforming uses and structures and shall be governed by Article 14-10.

(c) Public Display of Certain Material Prohibited

Materials offered for sale from adult newsracks shall not be displayed or exhibited in a manner which exposes to public view any pictures or illustrations of adult human genitals or specified sexual activities in a manner which exposes the material to the view of persons outside the building in which the bookstores or motion picture theaters are located.

(d) Impounding of Newsracks

(i) The provisions of Article 14-10, dealing with nonconforming uses shall be applicable to adult newsracks, adult bookstores and adult motion picture theaters, and all adult newsracks are required to comply with the provisions of this section.

(ii) An adult newsrack found in violation of this section may be impounded by any police officer of the City after:

A. A notice of violation has been affixed to the adult newsrack stating the section which has been violated and stating that the adult newsrack will be impounded if the violation is not abated within three days;

B. The violation has not abated within three days of the posting of the notice of violation;

C. The police department has presented to the municipal court affidavits or other evidence sufficient to show a prima facie violation of this article; and

D. The municipal court has issued a written order permitting the impounding of the adult newsrack pursuant to this section.

(iii) When an adult newsrack is impounded, a complaint for violation of the section for which the adult newsrack was impounded, must be filed within 14 days of the impounding. If such action is not commenced within 14 days, or if a final appealable

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decision in such action is rendered more than 60 days from the filing of the action, the adult newsrack, together with its contents and all money, if any, shall be released to any person who provides sufficient proof of ownership of the adult newsrack, without requiring the payment of any impound fees; provided, however, that no adult newsrack shall be released because a final appealable decision was not rendered within 60 days of the filing of the action of the claimant of the adult newsrack is responsible for extending the judicial determination beyond the allowable time limit.

(iv) The person who provides sufficient proof of ownership of the adult newsrack may have the adult newsrack, together with its contents and all money, if any, returned upon paying an impound fee of \$25, or upon order of the municipal court, if any, who authorized the seizure of the newsrack, or pursuant to the terms of paragraph (ii) of this section. Should there be a dismissal of the action charging a violation of this section, or an acquittal of the charges, the court ordering the dismissal or entering the acquittal may provide for the release of any newsrack and its contents impounded or the return of any impound fee paid for the release of an adult newsrack impounded pursuant to such charges.

(v) All adult bookstores and adult motion picture theaters as defined in this section which were lawful before the effective date of this section and which violate any provision of this section shall have a period of 90 days from the effective date of this section within which to terminate the violation.

(vi) If such violation is not terminated within the time period set forth in paragraph (C)(1)(d)(v) of this section, the adult bookstore or adult motion picture theater shall be subject to the penalties set forth in paragraph (e) below and, in addition, the City Attorney shall be authorized to apply to the district court for an injunction to prohibit the offending adult bookstore or adult motion picture theater from operating such business until the violation is terminated.

(e) Penalty

Notwithstanding any other provision of this section, any person who violates this section may be punished as follows:

(i) By imprisonment in the county jail not to exceed 90 days;

(ii) By forfeiture of the newsrack impounded pursuant to paragraph (d) above, providing a reasonable value of such newsrack does not exceed 300 dollars;

(iii) A fine not exceeding 300 dollars; or

(iv) A combination of such imprisonment, forfeiture and fine; provided, that in no event shall any fine imposed, when added to the reasonable value of any impounded newsrack which is forfeited, exceed the sum of 300 dollars.

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(f) Licensing of Sexually Oriented Businesses

Except as provided in paragraph (iii) below, from and after the effective date of this section, no sexually oriented business shall be operated or maintained in the City of Santa Fe without first obtaining a license to operate issued by the City of Santa Fe.

(i) A license may be issued only for one sexually oriented business located at a fixed and certain place. Any person, partnership, or corporation that desires to operate more than one sexually oriented business must have a license for each.

(ii) No license or interest in a license may be transferred to any person, partnership or corporation.

(iii) All sexually oriented businesses existing and properly registered with the City at the time of the passage of this section must submit an application for a license within 90 days of the passage of this section. If an application is not received within said 90-day period, then such existing sexually oriented business shall forfeit registration and cease operations.

(g) Application for License

(i) Any person, partnership, or corporation desiring to secure a license shall make application to the accounts receivable office. The application shall be filed in triplicate with and dated by the accounts receivable office. A copy of the application shall be distributed promptly by the accounts receivable office to the Santa Fe Police Department and to the applicant.

(ii) The application for a license shall be upon a form provided by the accounts receivable office. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers or directors of a corporate applicant and all stockholders holding more than five percent of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business, shall furnish the information requested on the accounts receivable office form, which shall include, but is not limited to the following information under oath:

A. Name and address, including all aliases.

B. Written proof that the individual is at least ~~18~~eighteen years of age.

C. Whether the applicant previously operated in this or any other county, City or state under a sexually oriented business license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefore, and the

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business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

D. All criminal statutes, whether federal or state, or City ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

E. The address of the sexually oriented business to be operated by the applicant and a full description of the nature of the business.

F. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all shareholders owning more than five percent of the stock in said corporation and all officers and directors of the corporation.

(iii) Within ~~21~~twenty one days of receiving an application for a license the accounts receivable office shall notify the applicant whether the application is granted or denied.

(iv) Whenever an application is denied, the accounts receivable office shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ~~30~~thirty days of receipt of notification of denial, a public hearing shall be held in accordance with §14-6.2(C)(1)(n).

(v) Failure or refusal of the applicant to give requested information or the giving by the applicant of false or misleading information relevant to the application shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the accounts receivable office.

(h) Standards for Issuance of License

To receive a license to operate a sexually oriented business, an applicant must meet the following standards:

(i) If the applicant is an individual:

A. The applicant shall be at least ~~18~~eighteen years of age.

B. The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

C. The applicant shall not have been found to have previously violated this section within five years immediately preceding the date of the application. Municipal court

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shall provide disposition of all ordinance violations at the request of the accounts payable office.

(ii) If the applicant is a corporation:

A. All officers, directors, and stockholders required to be named under paragraph(g)(ii) above shall be at least eighteen years of age.

B. No officer, director or stockholder required to be named under paragraph(g)(ii) above shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

C. No officer, director, or stockholder required to be named under paragraph(g)(ii) above shall have been found to have previously violated this section within five years immediately preceding the date of this application.

(iii) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest:

A. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen years of age.

B. No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

C. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have previously violated any provision of this section within five years immediately preceding the date of this application.

(i) Display of License or Permit

The license shall be displayed in a conspicuous public place in the sexually oriented business.

(j) Renewal of License or Permit

(i) Every license issued pursuant to this section will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the accounts receivable office. The application for renewal must be

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filed not later than ~~60~~sixty days before the license expires. The application for renewal shall be filed in triplicate with and dated by the accounts receivable office. A copy of the application for renewal shall be distributed promptly by the accounts receivable office to the Santa Fe Police Department and to the operator. The application for renewal shall be upon a form provided by the accounts receivable office and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(ii) A renewal fee shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty shall be assessed against the applicant who files for a renewal less than ~~60~~sixty days before the license expires. If the application is denied, one-half of the renewal fee shall be returned.

(iii) If the Santa Fe Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the accounts receivable office.

(k) Revocation of License

(i) The Council shall revoke a license or permit for any of the following reasons:

A. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

B. The operator or any employee of the operator, violates any provision of this section or any rule or regulation adopted by the council pursuant to this section; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

C. The operator becomes ineligible to obtain a license or permit.

D. Any cost or fee required to be paid by this section is not paid.

E. Any intoxicating liquor or cereal malt beverage is illegally served or consumed on the premises of the sexually oriented business.

(ii) The council, before revoking or suspending any license or permit, shall give the operator at least ten days' written notice of the charges against him, and the opportunity for a public hearing before the council, as hereinafter provided.

(iii) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

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(iv) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as a sexually oriented business for six months from the date of revocation of the license.

(l) Physical Layout of Sexually Oriented Businesses

Any sexually oriented business having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment, must comply with the following requirements:

(i) Access

Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment, and shall be unobstructed by any door, lock or other control-type devices.

(ii) Construction

Every booth, room, or cubicle shall meet the following construction requirements:

A. Each booth, room, or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.

B. Have at least one side totally open to the public lighted aisle so that there is an unobstructed view at all times of any occupying same.

C. All walls shall be solid and without any openings, extended from the floor to the height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleaned.

D. The floor must be light colored, nonabsorbent, smooth textured and easily cleaned.

E. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten foot candles at all times, as measured at the floor.

(iii) Occupants

Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

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(m) Responsibilities of the Operator

(i) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, birth date, sex, telephone numbers, Social Security Number, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

(ii) The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the Santa Fe Police Department at all reasonable times.

(iii) Every act or omission by an employee constituting a violation of the provisions of this section shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(iv) Any act or omission of any employee constituting a violation of the provisions of this section shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(v) No employee of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business or to allow any minor to view the sexually oriented activities, performances, materials or other related matter or act as defined herein.

(vi) The operator shall maintain the premises in a clean and sanitary manner at all times.

(vii) The operator shall maintain at least ten footcandles of light in the public portions of the establishment, including aisles, at all times.

(viii) The operator shall insure compliance of the establishment and its patrons with the provisions of this section.

(n) Administrative Procedure

Any person aggrieved by any final action of a City official, officer, or department may file an appeal contesting any final action of the City relating to denial, renewal, nonrenewal, revocation, or suspension of a license for a sexually oriented business pursuant to §14-3.17.

(o) Exclusions

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All accredited and duly licensed private schools and public schools located within the City of Santa Fe are exempt from obtaining a license hereunder when instructing pupils in sex education as part of their curriculum.

(p) Enforcement

The City of Santa Fe Land Use Department shall have the authority to enter any sexually oriented business at all reasonable times to inspect the premises and enforce this section. In the event that during such inspection, circumstances may indicate a violation of an ordinance or other law, code enforcement officers shall report their findings to the City of Santa Fe Police Department for further investigation or other response as indicated.

(2) Apothecary Shops or Pharmacies

The business shall be confined principally to the compounding and dispensing at retail of drugs and medicines and the sale of medical and dental supplies and devices.

(3) Eating and Drinking Establishments

(a) In the RAC and AC Districts, such uses ~~shall do~~ not include nightclubs. ~~A "nightclub" is an establishment that, for profit, provides, in combination with service of alcoholic beverages, amplified live entertainment, or amplified music for dancing after the hour of 10:00 pm. Further, no food or drinks may be sold for consumption in automobiles on the premises.~~

Comment [CLG15]: relocated to 14-12

(b) In the BIP District, such uses ~~shall may~~ not exceed 5000 square feet of floor area and ~~shall may~~ not provide drive-through services. Additionally, such uses shall be located a minimum of fifty feet from any existing residential use or any undeveloped residential zoning district. Eating and drinking establishments adjacent to residentially zoned property must close any outside portion of their establishment no later than 9:00 p.m.

Comment [CLG16]: relocated from 14-4 BIP regulations

(4) Flea Markets

(a) Such uses shall:

(i) Meet the requirements of §§14-8.4, 14-8.6, and 14-8.10 for landscaping and screening, parking, and signs, respectively. For the purposes of implementing sign regulations of §14-8.10 a flea market constitutes one business establishment.

(ii) Meet the requirements of the garbage, litter, and weed ordinances.

(iii) Not operate as a campground.

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(iv) Not be located upon open space or landscaping areas required by this chapter for another *building* or use.

(v) Be ~~permitted to be located upon~~ parking areas only so long as enough area remains to meet all parking required by this chapter for both the flea market and the other *building* or use. This cumulative parking requirement may be reduced pursuant to §14-8.6(B); however, if a development plan is required, the reduction may be approved by the Planning Commission concurrently with the development plan.

(vi) Be required to obtain a certificate of occupancy whether or not a *building* permit is required.

(b) For flea markets with fifteen ~~(15)~~ or more vendors, development plans showing parking, vendor area, and landscaping shall be approved by the Planning Commission as set forth in §14-3.8. For flea markets with less than fifteen ~~(15)~~ vendors, a site plan showing parking, vendor area, and landscaping shall be approved by staff. Fewer than five ~~(5)~~ individual vendors located on a property do not constitute a flea market.

(c) Complaints about flea market operation shall be reviewed by the ~~City Zoning Inspector's office~~ Land Use Director and if valid, the facility shall be given one ~~(1)~~ to five ~~(5)~~ days written notice to remedy the complaint. Should the operator fail to remedy the complaint within the time set forth in the written notice, the Governing Body may set a public hearing to consider revocation of the operator's license. The operator shall be given notice of the public hearing and an opportunity to be heard.

(d) These provisions do not apply to markets located ~~upon~~ City property which are subject to an alternate approval process.

(5) Offices for Those Licensed by the State to Practice the Healing Art or Any Branch Thereof Pertaining to Human Beings

Offices and accessory buildings specified shall not be considered as "service establishments."

(6) Neighborhood Grocery Stores and Laundromats Catering to Local Pedestrian Trade

(a) A solid masonry *wall* not less than six ~~6~~ feet in height shall be erected along side and rear lot lines with adjoining residential *lots*;

(b) No more than one wall sign of not more than ~~20~~ twenty percent of the front *wall* area, excluding doors and windows, shall be allowed;

(c) The maximum ~~lot area to floor area ratio shall be~~ is ~~three to one~~ 3.0. The maximum floor area ~~shall be~~ is 3,000 square feet; and

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~~(d) — Permitted proximity to existing convenience grocery stores shall be based on individual review of need and areas served by existing stores.~~

Comment [CLG17]: should this have more objective standards?

(7) Private Clubs and Lodges

(a) The use type ~~shall~~ does not include uses the chief activity of which is a service customarily carried on as a business.

(b) In all ~~R~~ residential districts except R-10, R-12, R-21, R-29 ~~RM~~ and RAC, the following additional standards ~~shall~~ apply:

(i) No such facility shall have a lot area of less than ~~2~~ two acres.

(ii) No structure in connection with such facility shall be closer than ~~25~~ twenty five feet to any lot line.

~~(8) — Residential Suite Hotel and Motel Expansions~~

~~The expansion of a residential suite hotel or motel use by the addition of one or more buildings to an existing residential suite hotel or motel shall be allowed as a special exception in RM-2 districts.~~

~~(a) — Maximum allowable gross density in an RM-2 district as permitted by this chapter shall not be exceeded by the granting of a special exception under this section. For purposes of calculating the number of allowable dwelling units in any RM-2 district for a residential suite hotel or motel, each guest room of a residential suite hotel or motel shall be deemed to be a dwelling unit.~~

~~(b) — The off site impact of site generated traffic shall be determined based on a study performed by the developer utilizing the latest edition of the Highway Capacity Manual. The results of the corresponding impacts shall be evaluated relative to the computed levels of service at various time frames and durations as defined by the manual. A plan for mitigating any adverse impacts shall be proposed by the developer and approved by the City traffic engineer prior to submittal of a request for a special exception. The Traffic Mitigation Plan shall be based on the results of the traffic impact study and shall include proposed improvements, a cost estimate, a construction schedule, and the extent of participation by the proposed development.~~

(9) Personal Care Facilities for the Elderly

Provided all state and federal statutes governing the facility shall be complied with prior to issuance of a certificate of occupancy.

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(10) Vacation Time Share Projects

~~Vacation time share projects are comprised of one or more dwelling units subject to timeshare use, interval use or a private vacation/residential club.~~ The provision of operating and/or management services to the individual or multiple owners of vacation time share dwelling units is a commercial use and operators/managers shall be required to obtain a business registration from the City.

Comment [CLG18]: moved to 14-12

(11) Veterinary Establishments

Except in an RR district the following shall apply:

- (a) The facilities shall provide treatment for animals of a non-agricultural, domestic household nature only, including but not limited to dogs, cats, caged birds, and other animals typically capable of being housed within a family dwelling unit.
- (b) The facilities shall contain no external kennels or areas of boarding, training, breeding or exercising of animals.
- (c) Overnight boarding of animals for medical purposes shall only be accommodated by soundproof rooms contained within the facility.
- (d) Continuous and/or repetitious noise and/or odors discernable at the lot line shall be cause for investigation by the City Land Use Department Director, potentially leading to revocation of the occupancy permit.
- (e) Any treatment facility for large or typically farm animals, including but not limited to horses, cows, sheep, chickens and pigs, shall be excluded from the list of permitted uses.

(D) Industrial Uses

(1) ~~Automobile salvage and wrecking yards, junk yards or yards used in whole or in part for scrap or salvage operations or for processing, storage, display or sales of any scrap, salvage or secondhand building materials, junk automobiles or secondhand automobile parts. Such uses shall be~~ Salvage yards are subject to the following limitations:

Comment [CLG19]: this is all contained within definition of salvage yard

- (a) Front yards ~~shall have a minimum depth of 50 feet.~~ and Y yards adjoining residential districts shall have a minimum depth of ~~50~~ fifty feet. Such yards may be used for customer parking or for landscaping and shall not be used for storage or display;
- (b) Such uses shall be enclosed by solid *walls* or solid fences at least six feet in height, with access only through solid gates which shall be kept closed when not in use;
- (c) No objects shall be stacked or stored higher than the minimum height of the enclosing *wall* or fence required in subparagraph (2) above, except within a completely enclosed *building*; and
- (d) All uses shall conform to performance standards as set forth in §10-4.

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(2) Individual Mini Storage Area units which are not directly accessible from outside the ~~within a Completely Enclosed B~~ building

Comment [CLG20]: change to comport with use table

(a) The plan for operation of the storage area shall be compatible with other permitted uses existing in the vicinity.

(b) The storage area shall not unreasonably interfere with permitted uses because of ~~noise, vibrations, smoke, dust, odor, heat, glare, traffic congestion, or any similar~~ nuisance.

Comment [CLG21]: these are not typically mini storage unit problems

(c) No individual storage unit ~~shall~~ may exceed 200 square feet.

(d) ~~No individual storage unit shall be directly accessible from the outside of the building.~~

(e) ~~Outdoor storage shall be~~ is prohibited on the site if located within a C-2 district or the BCD.

Comment [CLG22]: This is addressed in the applicability of the subsection

(3) Mini-Storage Units

(a) A *wall* and/or fencing plan shall be submitted for staff review and approval prior to issuance of a building permit. Fences or *walls* shall provide a visual buffer or screen and be constructed of opaque materials.

(b) A landscape plan meeting all the requirements of §14-8.4 shall be submitted to City staff for approval prior to issuance of a building permit.

(c) The architecture shall be compatible with the zoning district as approved by ~~City staff~~ the Land Use Director. One residential unit excluding ~~mobile, modular, and trailer~~ manufactured homes is allowed as part of the storage unit *development* but this unit shall be architecturally compatible with the storage units. No portion of the storage units or the residential unit shall exceed one story in height.

(d) Lighting shall be of a nature that is not intrusive to surrounding residential uses.

(e) Mini storage units approved after July 25, 2007 shall comply with the following:

(i) No building shall be located less than 100 feet from a residentially zoned property unless the required landscaping buffer adjacent to the residentially zoned property is twice the otherwise required width.

(ii) An ~~8~~ eight foot masonry *wall*, either stuccoed on the outside or made of decorative block, is required along any property line abutting a residentially zoned property.

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(4) Research, Experimental, and Testing Laboratories

Such uses shall ~~be in compliance~~ with the performance standards ~~set forth in~~ §10-4 and shall not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical interference, ~~nor shall it~~ otherwise create a risk to health, safety, or property of residents or occupants of adjacent or neighboring residential properties.

(E) Telecommunication Facilities

Comment [CLG23]: due to ongoing review and specialized limits on regulation this section is not substantively revised

(1) Purpose

The purposes of this section are to:

- (a) Create an even playing field consistent with the 1996 Telecommunication Act's "competitively neutral" mandate for local governmental regulation of telecommunication companies;
- (b) Promote regulatory certainty;
- (c) Register telecommunication providers within the City in order to ensure compliance with this section;
- (d) Enter a lease agreement with all telecommunication providers who use the City's real property including public *rights-of-way*;
- (e) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- (f) Ameliorate any impacts upon residents of the City of Santa Fe and the municipality of expanding needs for telecommunications facilities;
- (g) Assure the highest degree of coordination between residents of the City and the telecommunications industry in achieving the desirable objective of both the industry and the public;
- (h) Minimize any adverse impacts of towers and antennas on residential areas and land uses;
- (i) Encourage the location of towers in nonresidential areas;
- (j) Minimize the total number of towers throughout the community;

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(k) Ensure that the height of towers in the Santa Fe area are not higher than reasonably necessary and that they are to the maximum extent possible integrated into the terrain and architecture of Santa Fe;

(l) Encourage users of towers and antennas to configure them in a way that minimizes any adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques, consistent with state and federal requirements, including FAA requirements;

(m) Encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;

(n) Gather information and provide remedies for the public health and safety impacts of communication towers;

(o) Avoid potential damage to adjacent properties from tower; and

(p) Comply with all other regulatory requirements imposed by the federal and state government;

(q) Minimize fiscal impacts upon taxpayers due to increased use of public rights-of-way by deregulated commercial enterprises such as telecommunications owners.

(2) Applicability

All towers or antennas located within the City limits whether upon private or public lands shall be subject to this section. This section shall apply to towers and antennas upon state and federal lands to the extent of the City's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise. Only the following facilities shall be excepted from the application of this section:

(a) Amateur Radio Station Operators/Receive Only Antennas

This section shall not govern any tower, or the installation of any antenna, that is under ~~70~~**seventy** feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.

(b) Preexisting Towers or Antennas

Preexisting towers and preexisting antennas shall not be required to meet the requirements of this section, other than the requirements of §§14-6.2(E)(3)(f) and (g), so long as a building permit has been issued for said preexisting towers prior to adoption of this section. Any tower or antenna approved under an interim agreement with the City shall be considered a preexisting tower or antenna if the Governing Body does not find, at

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the time of this section's adoption, that grandfathering the antenna or tower is contrary to the purposes of this section.

(c) AM Array

For purposes of implementing this section, an AM array, consisting of one or more tower units and supporting ground systems which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM Array.

(d) Emergency Services

Towers and antennas used exclusively for emergency services including police, fire, and operation of the City water utility.

(3) General Requirements

All towers and antennas whether administratively approved or requiring a ~~special exception~~ special use permit shall comply with the existing City codes including the requirements for obtaining a building permit pursuant to §7-1.5. In addition to the building permit requirement and all other requirements imposed for registration, licensing, design, building and construction within the City including the requirements of Chapters XXVII, XVIII and VII, the following shall be generally required for towers and antennas.

(a) If the proposed telecommunications facility is located in a district that would require approval of a development plan by the Planning Commission according to provisions elsewhere in this chapter, approval of a development plan is not required by the Planning Commission. Instead, a ~~special exception~~ special use permit is required to be reviewed by the Board of Adjustment as set forth in §14-6.2(E)(7).

(b) Principal or Accessory Use

Antennas and towers may be considered either a principal or an accessory use depending upon whether they are used principally for the benefit of others not located upon the land or as an accessory in aid of other activities occurring upon the land. A different existing use on the same *lot* shall not preclude the installation of an antenna or tower on such *lot*.

(c) Lot Size

For purposes of determining whether the installation of a tower or antenna complies with these regulations, the dimensions of the entire *lot* shall control, even though the antennas or towers may be located on leased parcels within such *lot*.

(d) Inventory of Existing Sites

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Each applicant for an antenna and/or tower shall provide to the Land Use ~~Director~~Department with an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are both within the jurisdiction of the City and within three miles of the border thereof, including specific information about the location, height, and design of each tower. The Land Use ~~Director~~Department may share such information with all members of the public provided, however, that the Land Use ~~Director~~Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(e) Aesthetics

New towers and antennas erected in Historic Districts and residential zones, since implementation of this section, shall meet the following requirements that shall be reviewed, interpreted and applied by all reviewing authorities.

(i) Towers shall be painted a neutral color so as to reduce visual obtrusiveness, subject to any applicable standards of the FAA.

(ii) At a tower site, the design of the related structures shall, and consistent with requirements of the FAA, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(iii) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(iv) The antenna shall be situated to minimize its visual impact from adjacent lands, public rights of way and residential areas.

(f) Lighting

Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen shall cause the least disturbance to the surrounding properties.

(g) Building Codes; Safety Standards

To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a

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danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have ~~30~~thirty days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said ~~30~~thirty days shall constitute grounds for the removal of the tower or antenna at the owner's expense and shall also constitute an abandonment of the tower pursuant to §14-6.2(E)(8).

(h) Franchises, Leases, Certificates of Public Convenience, Licenses and other Contracts for Use of Real Property

Owners and/or operators of towers or antennas shall certify in writing that all franchises, leases and other contracts, if any, for use of real property required by the ~~PUC, SCC~~Public Regulation Commission, FCC, FAA or any other regulatory body for the construction and/or operation of a telecommunication system in the City have been obtained.

(i) Public Notice

For purposes of this section, any ~~special exception~~special use permit request, waiver request, or appeal of an administratively approved use or ~~special exception~~special use permit shall require public notice as set forth in §§ 14-3.1(F) and 14-3.1(H).

(j) Signs

No signs shall be allowed on an antenna or tower unless said signs are necessary for safety reasons or for compliance with the law. If a sign is required it shall comply with all local ordinances regarding signage unless a federal or state law requires otherwise.

(k) Equipment Cabinets

Equipment cabinets associated with antennas or towers shall comply with the requirements of §14-6.2(E)(7).

(l) Annual Antenna/Tower Plan

Telecommunications owners shall submit an annual application for approval of multiple towers and/or antenna sites to be constructed within the City within a year.

(m) Form of Submittal

All submittals to the Land Use Department or to the various other officials having authority to review and approve proposed facilities, pursuant to this section, shall be in writing with accompanying data on a diskette in a format acceptable to the GIS division so that infrastructure developed within the City can be incorporated into the City's graphic information system.

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(n) Property Maintenance

All property used for siting of towers or antennas shall be maintained, without expense to the City, so as to be safe, orderly, attractive, and in conformity with all City codes including those regarding removal of weeds and trash.

(o) Survey of Underground Facilities

If the construction requires the location of underground facilities, said facilities shall be surveyed by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a ~~registered New Mexico~~ professional land surveyor. The permittee shall relocate its own facilities that are not located in compliance with permit requirements. If conduit is to be constructed and placed within or upon leasable City property said conduit shall be dedicated to the City pursuant to this section and in accordance with the principles set out in Chapter XXVII.

Comment [CLG24]: defined term

(p) Noncomplying Work

Upon order of the Land Use Director all work outside of City rights-of-way which does not comply with the application plans and specifications for the work, or the requirements of this section or approval authority, shall be removed or made to comply within ~~60~~ sixty days. Upon order of the Public Works Director all work within City rights-of-way which does not comply with the application plans and specifications for the work, or the requirements of this section, shall be removed or made to comply within ~~60~~ sixty days. Permittee is only responsible for its own facilities.

(q) Completion of Construction

The applicant shall promptly complete all construction activities affecting City owned property so as to minimize disruption of the leasable City property.

(r) Record Documents

The permittee, within ~~60~~ sixty days after completion of construction of all approved towers and antennas, shall furnish the City with two complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

(s) Restoration of Improvements

Upon completion of any tower or antenna construction work, the permittee shall promptly repair any and all public and private property improvements, fixtures, structures and facilities in the leasable City property damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

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(t) Landscape Restoration

All vegetation, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of towers or antennas, shall be replaced or restored by the permittee, as nearly as practicable to the condition existing prior to performance of work. All restoration work within the leasable City property shall be done in accordance with plans approved by the appropriate City division and applicable City code, including but not limited to Chapter XXIII.

The City will require a signed affidavit from applicant acknowledging that, regardless of any agreements between the applicant and property owner, the property owner has been advised that he or she may be responsible for the removal of all towers and antennas upon abandonment.

(u) Traffic Control Plan

All applications which involve work on, in, under, across or along any public rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, if any, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(v) Historic and Escarpment Districts

Towers and antennas may be approved within designated historic or ~~e~~Escarpment ~~o~~Overlay ~~d~~Districts only by ~~special exception~~special use permit in accordance with §14-6.2(E)(6). No tower or antenna shall be permitted, notwithstanding the foregoing, upon lands or structures that are designated contributing, significant, or a landmark as set forth in §14-5.2.

(w) Noise

All towers and antennas and affiliated facilities including but not limited to telecommunications facilities shall be designed and constructed in such a manner as to minimize noise to the maximum extent technically feasible by way of insulation and sound-proofing. Additionally, no towers or antennas shall be permitted if they violate the City's noise ordinance.

(x) Tower and Antenna Heights

Heights shall be generally limited to the overlying or underlying zoning height limits, whichever are more restrictive. In RR, R-I through R-6, R-7, R-7I, R-8 and R-9 districts, heights of towers and antennas shall not exceed 24 feet unless located on a permitted or permissible nonresidential building where towers and antennas shall be limited to ~~35~~

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thirty five feet. Except in C-2, I-1, and I-2 districts the underlying height limit shall be 100 feet. Overlying zoning limits shall still apply. Preexisting towers, preexisting antennas and preexisting tower alternatives, as well as new antennas co-sited upon preexisting towers and other preexisting structures, shall not be so restricted, so long as they do not exceed the height of the preexisting tower or structure. Any tower or antenna exceeding the height limit imposed by this general requirement shall require a ~~special exception~~ special use permit pursuant to §14-6.2(E)(6) and a demonstration before the appropriate reviewing body that compliance with this general requirement cannot be achieved by use of alternative locations and without loss of telecommunications service coverage.

(y) Airport Area

Any tower or antenna to be built within the Santa Fe airport terminal control area shall be built in conformity with all FAA and FCC regulations and shall be submitted for administrative review to the City's airport manager in order to assure that the tower or antenna will not cause a risk to aviation traffic by way of physical obstruction or signal interference.

(z) A condition of all permits for new tower construction shall be that the permittee shall allow co-location, to the extent feasible, of telecommunications facilities at commercially reasonable rates upon or within the site that is the subject of such permit.

(4) Uses Not Requiring a Permit

(a) General

The uses listed in this section are generally deemed to be permitted and shall not require administrative approval or a ~~special exception~~ special use permit pursuant to this section. However, nothing herein shall be deemed a waiver of any enforcement official's power to seek redress against persons placing facilities in such a location or manner as to create a risk to public safety or otherwise in violation of law.

(b) Permitted Uses

A permit or approval, excepting only a building or electrical permit if otherwise required, is not required for the construction or use of the following antennas and towers so long as they comply with the following requirements. Nothing herein shall constitute a waiver of the City's enforcement authority in the event that a particular tower or antenna is either noncomplying with the following criteria or is deemed to constitute a safety hazard:

(i) Antennas and other over-the-air receiving devices, for the reception of video images as defined and regulated by FCC Report and Order #96-328, which devices do not exceed one meter in diagonal length or diameter or are designed to receive television

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broadcast signals only. The antenna, located in Historic Districts and residential zones, to the maximum extent possible, without interfering with signal reception, and without performing new or additional construction, is screened from view of adjacent properties and adjacent public rights-of-way. Antennas may not be required to be screened if the screening device would create a greater visual impact than the unscreened antennas. The screening may include existing parapets, walls, or similar architectural elements provided that it is painted and texturized to integrate with the architecture of the building. As an alternative screening method, landscaping positioned on the premises to screen antennas from adjacent properties may be proposed in lieu of architectural screening.

(5) Administrative Approval of Certain Uses

(a) General

The following provisions shall govern administrative approvals for towers and antennas. All such approvals or denials shall be made in a timely fashion, and if not made within ~~30~~ thirty days, applicant will be provided with written notification why delay continues.

(i) Each applicant for administrative approval shall apply to the Land Use ~~Department~~ Director, providing the information required by §14-6.2(E)(3) and pertinent information required pursuant to §14-6.2(E)(6) and a nonrefundable fee as established by resolution of the Governing Body ~~of the City~~ to reimburse the City for the actual costs of reviewing the application.

(ii) The Land Use Department shall review and approve applications for administrative approval if the proposed use complies with §14-6.2(E)(3), the setback and separation requirements of §14-6.2(E)(6), and all other laws and all other pertinent provisions of ~~City~~ this code.

(iii) If an administrative approval is denied, the applicant may appeal such denial by filing an application for a ~~special exception~~ special use permit pursuant to §14-6.2(E)(6).

(iv) Prior to issuance of any administrative approval pursuant to this section, the applicant shall post a public notice poster obtained from the ~~City~~ Land Use Director upon the property where the tower or antenna is to be located. The poster shall be prominently displayed, visible from a public street, and securely placed on the property. The applicant shall use its best efforts to cause the poster to remain posted from the time of application to the time the appeal period has run. The poster shall be removed within 30 days of final action. Failure to do so may result in the City removing the sign at the applicant's expense. A civil fee of \$50.00 will be charged. The poster shall indicate the nature of the request, the identification of the property affected and the time, date and location and manner in which an interested member of the public shall review the application.

(b) List of Uses Eligible for Administrative Approval

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The following uses may be approved by the Land Use ~~Department~~ Director after conducting an administrative review so long as the proposed use is not within a historic, south central highway corridor, or ~~Escarpment~~ Overlay ~~District~~:

(i) New Antennas on Existing Towers or Structures

An antenna that is attached to an existing tower or structure may be administratively approved. Co-location of antennas by more than one carrier on existing towers or structures shall take precedence over the construction of new towers. Co-location of antennas on existing towers or structures shall comply with all the following:

- A. No antenna shall extend more than ~~30~~ thirty feet above the highest point of the structure;
- B. The antenna shall comply with all applicable FCC and FAA regulations;
- C. The antenna shall comply with all applicable building codes; and
- D. The antenna shall not exceed the height limitation for the underlying or overlay zoning unless the antenna is placed on an existing tower or structure and does not exceed the height of the tower or structure.

(ii) Relocated Towers

Onsite relocation of towers may be approved administratively if:

- A. A tower that is being rebuilt to accommodate the co-location of one or more additional antennas may be moved onsite within ~~50~~ fifty feet of its existing location.
- B. Such relocation shall not increase the number of towers remaining on the site.
- C. A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to §14-6.2(E)(6)(d). The relocation of a tower hereunder shall in no way be deemed to cause a violation of §14-6.2(E)(6)(d).
- D. The height of a relocated tower shall be in compliance with the underlying and overlay zoning.

(iii) New Towers

New towers may be administratively approved so long as they are not within an underlying residentially zoned district provided a licensed professional engineer certifies

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the tower can structurally accommodate the number of shared users proposed by the applicant; the Land Use Department concludes the tower is in conformity with the goals set forth in §§14-6.2(E)(1) and (3); the tower meets the setback requirements in §14-6.2(E)(6)(c); and the tower is no higher than the lesser of the underlying or overlay zoning for the district.

(iv) Cable Microcell Network

A cable microcell network may be approved administratively if it constitutes the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

(v) Prior to issuance of any administrative approval for a site within a residentially zoned district pursuant to this section, the applicant shall, in addition to meeting the requirements of §14-6.2(E)(5)(a)(iv), provide notification by certified mail, return receipt requested, proof of which is to be included with the application to all property owners within 100 feet of the subject property, exclusive of right-of-way and if the property proposed to be used lies within the boundaries of a neighborhood association that has been listed with the Land Use ~~Department~~ Director to such neighborhood association.

(vi) Face-mounted antennas, ~~and~~ roof mounted antennas that are integrated into the natural rooftop profile of the building so as to resemble a permissible rooftop structure, such as a ventilator, cooling equipment, solar equipment, water tank, chimney, or parapet and to be no higher than twelve feet above the roof and tower alternatives, painted and textured to match the existing building or structure, may be administratively approved.

Comment [CLG25]: relocated from 14-12, definitions, because only used here.

(6) ~~Special Exceptions~~ Special Use Permits

(a) General

Any tower or antenna that is not otherwise permitted or administratively approved shall be brought for consideration to the Board of Adjustment. ~~Special exceptions~~ Special use permits may also require review and approval by the Historic Design Review Board or Planning Commission as detailed in this section. The following provisions shall govern the issuance of all ~~special exceptions~~ special use permits for towers or antennas:

(i) A ~~special exception~~ special use permit shall be required for the construction and placement of all towers and antenna in all zoning districts unless said construction or placement is otherwise permitted or administratively approved pursuant to this section.

(ii) Applications for ~~special exceptions~~ special use permits under this section shall be subject to the procedures and requirements of §14-3.6 except as modified in this section.

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(iii) Unless a waiver is granted in accordance with §14-6.2(E)(10), height shall be limited to the overlying or underlying district, whichever is more restrictive, except in C-2, I-1, and I-2 districts where the height limit shall be 100 feet.

| (iv) In granting a ~~special exception~~ **special use permit**, the reviewing body may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower or antenna.

(v) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a ~~licensed~~ **professional engineer**.

Comment [CLG26]: defined term

| (vi) An applicant for a ~~special exception~~ **special use permit** shall submit the information described in this section and a nonrefundable application fee to be established by resolution of the Governing Body, sufficient to reimburse the City for the costs of reviewing the application.

| (vii) Any denial of an application for a ~~special exception~~ **special use permit** pursuant to this section shall be in writing and shall explicitly state the grounds for the denial.

(viii) No new tower shall be allowed unless the applicant makes an adequate showing that tower alternatives are not viable. The availability of suitable existing towers, and other structures, shall be set out in all applications for new towers. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the reviewing body that no existing tower or structure can be used in lieu of new construction to accommodate the applicant's proposed telecommunications facility. An applicant shall submit information to the reviewing body related to the availability of suitable existing towers and other structures. Evidence submitted to demonstrate that no existing tower or structure can reasonably accommodate the applicant's proposed telecommunications facilities may consist of any of the following:

A. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements;

B. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements;

C. Existing towers or structures do not have sufficient structural strength or space available to support applicant's proposed telecommunications facilities and related equipment;

D. The applicant's proposed telecommunications facilities would cause unavoidable electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed telecommunications facilities;

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E. There are other limiting factors that render existing towers and structures unsuitable;

F. The owners of existing towers or structures will not allow the applicant to place its telecommunications facilities thereon, or such owners are requiring payments therefore that substantially exceed commercially reasonable rates.

(ix) In addition to Board of Adjustment approval set forth above, no ~~special exception~~ special use permit shall be granted in any ~~Historic~~ District unless the applicant can conclusively demonstrate:

A. To the Historic Design Review Board that:

1. A failure to grant a ~~special exception~~ special use permit would prohibit or effectively prohibit the applicant from providing services in a portion of the City;
2. All alternatives to location in the Historic District have been considered;
3. The conditions of §14-5.2(C)(5)(c)(i), (ii), (iii), (v), and (vi) have been met.

B. The Board of Adjustment and Historic Design Review Board shall conduct concurrent reviews of applications submitted under this section.

C. And to the Governing Body, in the event of an appeal.

(x) In addition to Board of Adjustment approval set forth above, no ~~special exception~~ special use permit shall be granted in an escarpment or south central highway corridor overlay districts unless the applicant can demonstrate to:

A. The Planning Commission that:

1. A failure to grant a ~~special exception~~ special use permit would prohibit or effectively prohibit the applicant from providing services in a portion of the City;
2. All alternatives to location in the escarpment district have been considered and all conditions of §14-5.6(D)(5) have been met where applicable.

B. The Board of Adjustment and Planning Commission shall conduct concurrent reviews of applications submitted under this section.

C. And to the Governing Body, in the event of an appeal.

(xi) Fencing and Walls

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Outside the ~~Historic~~ Districts, the Board of Adjustment may require that towers or antennas be enclosed by fencing or *walls* not less than six feet nor more than eight feet in height and may also require that any tower be equipped with an appropriate anticlimbing device. Inside the ~~Historic~~ Districts, if deemed necessary for safety, the Historical Design Review Board may require that towers or antennas be enclosed by fencing or walls not less than six feet nor more than eight feet in height and may also require that any tower be equipped with an appropriate anti-climbing device, provided that the fence or *wall* is designed to have the least negative impact upon the streetscape.

(xii) Landscaping

The Board of Adjustment may require landscaping surrounding towers and antennas. Existing vegetation and natural land forms on the site shall be preserved to the maximum extent possible.

(b) Information Regarding Towers

In addition to any information required for applications for ~~special exceptions~~special use permit pursuant to §14-3.6, applicants for a ~~special exception~~special use permit for a tower shall submit the following information:

(i) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other jurisdictions), General Plan classification of the site, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Land Use ~~Department~~Director to be necessary to assess compliance with this section.

(ii) Legal description of the parent tract and leased parcel including a copy of the plat of survey for the land use department's verification that all facilities are placed upon a legal *lot* of record.

(iii) The setback distance between the proposed tower and residentially zoned property.

(iv) The separation distance from other towers shall be shown on an updated site plan or map. The applicant shall also identify all existing tower(s) within 1,000 feet and the owner/operator of the nearest existing tower.

(v) A landscape plan showing specific landscape materials.

(vi) Method of fencing, and finished color and, if applicable, the method of camouflage.

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(vii) A description of compliance with §§14-6.2(E)(3) and §14-6.2(E)(6) and all applicable federal, state or local laws.

(viii) A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.

(ix) Identification of the entities providing the backhaul network for the tower(s) described in the application and other wireless sites owned or operated by the applicant in the municipality.

(x) A description detailing the scientific, technical or engineering concerns which use of tower alternatives not viable under §14-6.2(E)(6)(a)(viii) and stating precisely why the use of existing towers and other structures is not viable.

(xi) A description of any locations for additional towers or antennas to be constructed within a year of the requested ~~special exception~~ special use permit.

(xii) Any other information reasonably required by City staff in order to determine if applicant has substantially complied with this section.

(c) Tower Setbacks

The following setback requirements shall apply to all towers. All towers shall be set back a distance equal to at least 100 percent of the height of the tower from any adjoining *lot* line. The setback distances shall be measured by drawing a straight line between the base of the tower or antenna and the nearest adjacent property line.

(d) Separation Distances Between Towers

Separation distances shall be measured by drawing or following a straight line between the base of any existing tower and the proposed base of a new tower. The minimum separation distances shall be 1,000 feet.

(7) Equipment Storage Facilities

The equipment used in association with an antenna or tower shall be safely stored in a *building* or equipment cabinet.

(a) If the equipment is stored in a *building*, the *building* shall meet all applicable code requirements for *buildings* excepting only that there shall be no parking requirement for the tower or antenna use. Any other uses of the building shall meet applicable parking requirements.

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(b) If the equipment is stored in an equipment cabinet, the equipment cabinet shall be no more than ten feet in length and width and no more than five feet in height. The equipment cabinet shall be placed in the least visible section of the parcel, land, or facility and shall be constructed and painted in a manner so as to minimize the visibility of the equipment cabinet, unless part of a City approved or sponsored art program.

(c) All equipment storage facilities shall comply with all applicable electrical, building, plumbing, and any other safety codes.

(8) Removal of Abandoned Antennas and Towers

Any antenna or tower that is not utilized for provision of telecommunications services for a continuous period of six months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ~~90~~ninety days of receipt of notice from the City notifying both parties of such abandonment. Failure to remove an abandoned antenna or tower within said ~~90~~ninety days shall be grounds to remove the tower or antenna at both parties' expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(9) Preexisting Towers and Antennas

Preexisting towers and antennas for which a building permit has been issued prior to the effective date of this section shall be allowed to continue operation as they presently exist. All other antennas and towers, except relocated towers under §14-6.2(E)(3), shall be treated as new towers or antennas and shall be required to comply with this section. Routine maintenance, reconstruction, replacement, and placement of additional antennas on such preexisting towers shall be permitted. Other new construction of towers and antennas shall comply with the requirements of this section.

(10) Waivers

(a) Each reviewing body may grant a waiver of those requirements over which the reviewing body has review authority. Said waivers shall be granted only if the reviewing body finds in writing that said waiver:

(i) Is in the best interest of the community as a whole;

(ii) Will expedite the approval of an antenna, tower or tower alternative;

(iii) Will not jeopardize public health, safety and welfare;

(iv) Will either ameliorate the adverse impacts of antenna and tower proliferation or the adverse impact of requiring new construction of towers or antennas.

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- (v) Will better serve the purposes contained in §14-6.2(E)(1) of this section.
- (b) Factors to be considered in granting a waiver shall include:
 - (i) The height of the proposed tower or antenna;
 - (ii) The proximity of the tower or antenna to residential structures and residential district boundaries;
 - (iii) The nature of uses on adjacent and nearby properties;
 - (iv) The surrounding topography;
 - (v) The surrounding vegetation and foliage;
 - (vi) The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness;
 - (vii) The proposed ingress and egress; and
 - (viii) The availability of suitable existing towers or other structures; and
 - (ix) Such other factors as may be relevant.
- (11) Penalties and Proceedings for Antennas and Towers in Violation of this Section
 - (a) Revocation or Termination of Licenses, Leases, Permits or Approvals

Any license, lease, permit or approval granted pursuant to this section may be revoked for the following reasons:

- (i) Construction or operation in the City or in the public right-of-way of the City or upon public property without all necessary licenses, leases and grants of authorization.
- (ii) Construction or operation at an unauthorized location.
- (iii) Unauthorized assignments, sales or transfer of control of any required licenses, leases and grants of authorization.
- (iv) Misrepresentation by or on behalf of an applicant to any City official or in any application to the City.
- (v) Abandonment of towers or antennas without proper removal.
- (vi) Failure to remove facilities as required.

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(vii) Failure to pay taxes, compensation, fees or costs when and as due the City.

(viii) Violation of any material provisions of this section or of any material terms of any required licenses, leases and grants of authorization.

(b) Penalties

Any violation shall be punishable in an amount equal to that set forth in §1-3. All violators of state, federal, or local laws shall be declared a nuisance.

(c) Removal

In addition to the remedies provided in paragraph (a) and (b) above, the City may require the removal of any antenna or tower that is in violation of this section.

(d) Other Remedies

Nothing in this section shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of the City code.

(e) Notice and Duty to Cure

In the event that the City believes that an alleged violation has occurred the City shall give the alleged violator written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the alleged violator a reasonable period of time not exceeding 30 days to furnish evidence of any one of the following:

(i) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

(ii) That rebuts the alleged violation or noncompliance.

(iii) That it would be in the public interest to impose some penalty or sanction less than revocation or removal.

(f) Hearing

In the event that an alleged violator fails to provide evidence reasonably satisfactory to the City as provided in the preceding section, the City shall file a complaint with the municipal court.

(12) City Determinations

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With respect to any actions to be taken by the City under this §14-6.2(E), in the absence of any express deadlines contained in such sections, if the City has not taken such action within 30 days, the affected party may request in writing an explanation for such delay, and the City shall respond in writing within 10 days thereafter.

(F) Electric Facilities

(1) Title

§14-6.2(F) shall be referred to as the "Electric Facilities Ordinance."

(2) Authority

§14-6.2(F) is adopted pursuant to the following:

(a) §3-19-11 NMSA 1978;

(b) The general welfare and police powers conferred upon the City of Santa Fe by §3-17-1 et seq. and §3-18-1 et seq. NMSA 1978;

(c) The powers conferred upon the City of Santa Fe by New Mexico Constitution, Article X §§6(D) and 6(E) and the Municipal Charter Act, §3-15-1 et seq. NMSA 1978, which have been exercised by the City's adoption of its "Santa Fe Municipal Charter."

(3) Purpose

The purposes of §14-6.2(F) are to:

(a) Identify and, to the extent reasonable and practicable, reduce negative impacts upon residents of the City due to new and expanded electric facilities;

(b) Ensure that the company can continue to provide safe and reliable electric service that meets both the current and future needs of the City and its residents;

(c) Promote planning and regulatory certainty;

(d) Ensure the highest degree of coordination between the City, its residents, and the company to achieve the objectives of both the company and the public;

(e) Encourage thoughtful design of electric facilities through careful siting, landscaping, and architectural enhancements consistent with local, state, and federal requirements, and recognize the need for the company to operate and maintain the electrical system safely;

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- (f) Support the joint use of electric facilities and distribution facilities; and
- (g) Ensure compliance with §3-19-11 NMSA 1978 and all other controlling regulatory requirements under federal and state law and such other laws and regulations that may be applicable.
- (4) Electric Facilities Plan

The Governing Body shall adopt an Electric Facilities Plan as an amendment to the City of Santa Fe General Plan by passage of a resolution.

- (5) Annual Informational Meeting for Proposed Electric Projects

Notwithstanding any other process contemplated by §14-6.2(F), the company shall provide a list of proposed electric projects and request an annual meeting for an informational presentation with the Land Use Department, the Planning Commission, the Historic Design Review Board, and the City of Santa Fe Public Utilities Committee. The company, if requested, shall provide an informational briefing to the Governing Body.

- (6) Applicability

- (a) §14-6.2(F) shall apply to electric projects located within the City limits whether upon private or public lands; however, §14-6.2(F) shall apply to electric projects on state and federal lands only to the extent of the City's jurisdiction or in accordance with any contractual understanding. Nothing herein shall be deemed a waiver of the City's police power authority to seek redress against any person placing electric facilities in such a location or manner as to create a risk to public safety.

- (b) §14-6.2(F) shall not apply to the following:

- (i) The installation of distribution facilities consisting of 3 or fewer poles;
- (ii) Electric facilities and distribution facilities in existence prior to the adoption of this Ordinance (October 29, 2008);
- (iii) Emergency and temporary facilities or the emergency repair of electrical facilities; and
- (iv) The installation of any distribution underground system.

- (7) No Application Required

The following shall not require submittal of an application for review under §14-6.2(F); however, compliance with §14-6.2(F)(11) is required:

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- (a) Station maintenance including equipment replacement or upgrade inside existing walls to a higher capacity and maintenance or improvements to existing infrastructure such as painting over graffiti on walls or renewing landscaping;
- (b) The modification or addition of equipment, control units, or electric structures within a substation to the extent that there is no significant outside visual impact;
- (c) Use of substation property for temporary storage (for less than one year) of materials to the extent there is no outside visual impact;
- (d) Any line maintenance including repair, modification, or replacement of poles with poles of similar height and appearance, such poles to be not more than 10 feet taller than existing poles above ground height, and repair or replacement of components with a similar component such as guy wires and anchors, insulators, and hardware on existing electric structures;
- (e) Reconductoring and/or reframing on existing electric structures or lines to the extent not inconsistent with paragraph (7)(f) below;
- (f) Upgrade of line capacity that does not increase the total number of electric structures by ~~10-ten~~ percent added electric structures, or more than ~~10-ten~~ added feet of height on any individual electric structure or any additional new conductor on the electric structures;
- (g) Installation of equipment (such as switches or splice boxes) and communications cables and appurtenances on existing electric structures or lines;
- (h) Erection and removal of temporary facilities;
- (i) Relocation of electric structures within ~~50-fifty~~ feet of current site to accommodate pole replacement for maintenance or to provide clearances for public improvements;
- (j) Retirement, topping, and/or removal of any electrical facilities;
- (k) Developer or City-initiated projects that have received Planning Commission or other City approval; or
- (l) Erection or removal of temporary fencing or other temporary improvements (less than one year), so long as any temporary fencing or other temporary improvements comply with all other City requirements, regulations, and permits;
- (8) Administrative Approval

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(a) The following shall require submittal of an application for administrative review and approval by the Land Use ~~Department~~ Director unless they are located in ~~an~~ the Escarpment Overlay District or a Highway Corridor District in which case they shall require approval by the Planning Commission:

(i) Station improvements including relocation of nonelectric related infrastructure outside the wall, such as driveways or sidewalks and expansion of station size by expanding walls or fences at existing sites;

(ii) Relocation of electric structures within ~~50~~ fifty feet of current site other than those to accommodate pole replacement for maintenance or to provide clearance for public improvements.

(b) Administrative review and decision shall be made in a timely fashion, and if not made within ~~30~~ thirty days of the date a complete application was submitted, the company will be provided with written notification why delay continues and expected time frame for decision.

(c) The Land Use ~~Department~~ Director shall review and approve applications if the proposed use complies with all relevant City ordinances and regulations. However, the Land Use ~~Department~~ Director may choose not to make a decision on an application and refer the application to the Planning Commission for review upon notice to the company.

(9) Planning Commission; Governing Body Approval

(a) All electric projects not eligible under paragraphs (7) or (8) above except transmission facilities shall require submittal of an application for review and approval by the Planning Commission. Transmission facilities except those described in paragraphs (7) or (8) above shall require submittal of an application for review and recommendation by the Planning Commission for approval by the Governing Body.

(b) The Planning Commission shall consider the siting policies of the Electric Facility Plan as it may be amended and grant approvals with such conditions as are appropriate under this Chapter or deny approvals when electric projects are not harmonious with and adaptable to *buildings*, structures and uses of properties underlying and/or adjacent to the electric project and other properties in the vicinity of the electric project, and shall specify such requirements for ingress and egress to public streets, provisions for drainage, and screening as the Planning Commission deems necessary for the electric project to achieve conformance with the purposes of §14-6.2(F) and the General Plan.

(c) As per §3-19-11 NMSA 1978, if the Planning Commission disapproves an application for which it has approval authority, it shall state its reasons to the Governing

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Body. The Governing Body may overrule the Planning Commission disapproval and approve the application by a two-thirds vote of all its members.

(10) Historic District Review; Authority

All electric projects eligible in paragraphs (8) or (9) above which are located within a Historic District shall require Historic Design Review Board approval. Additional restrictions are set forth in paragraph (11)(j) below.

(11) General Requirements

(a) Aesthetics, Lighting, Signs, and Noise

Electric projects shall comply with all City ordinances and regulations with respect to materials, colors, textures, finish, screening and landscaping, and the design of related structures, subject to applicable design codes and safety standards. All electric projects shall also comply with any and all lighting, signage, and noise ordinances and regulations of the City.

(b) Design Codes; Safety Standards

Design and operation of electric facilities is governed by the National Electrical Safety Code (NESC) as adopted by the State of New Mexico, and other applicable national, state, and industry codes and guidelines.

(c) Electric and Magnetic Fields (EMF)

Electric and magnetic fields shall be considered when locating transmission lines and distribution lines in accordance with the Electric Facilities Plan.

(d) Property Maintenance

All real property owned or leased by the company used for switching stations, or substations shall be maintained, without expense to the City, so as to be safe, orderly, attractive, and in conformity with all applicable City codes and regulations with respect to the removal of weeds, trash, and graffiti.

(e) Permits; Plans Required

Building permits shall not be required for electric facilities and distribution facilities. For other uses, building permits shall be required as set forth in City Code.

(f) Restoration of Improvements

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Upon completion of an electric project, the company shall promptly repair any and all public and private property improvements, landscaping, fixtures, structures, and facilities damaged during the course of construction, restoring the same to a condition not less than its condition before the start of construction or as agreed to by the affected property owner and the company.

(g) Electric Facility Heights

Due to the need to meet safety requirements, electric facilities shall meet applicable clearances specified in the National Electrical Safety Code (NEC). Transmission facilities are between ~~60~~sixty and 100 feet in height. Distribution facilities are between ~~35~~thirty five and to fifty five feet in height.

(h) Airport

Any electric project within the Class D airspace surrounding the Santa Fe airport shall be built in conformity with all applicable Federal Aviation Administration (FAA) regulations. Any facilities requiring FAA submittal shall also be provided for informational purposes to the City.

(i) Traffic Control Plan

A traffic control plan shall be submitted as required by §23-2.17 SFCC 1987.

(j) Switching Stations and Substations

(i) *Walls* that protect and screen electric equipment shall be a maximum of ~~12~~twelve feet in height in the historic districts and ~~14~~fourteen feet in height elsewhere. *Walls* over ~~6~~six feet high shall be set back no less than ~~15~~fifteen feet from the property line. This paragraph takes precedence over other height limits set forth in this Chapter.

(ii) In ~~Historic~~ districts *walls* shall be earth tone stucco and articulated so that there is a change in wall height of no less than ~~8~~eight inches at least every ~~25~~twenty five linear feet of wall and that there is a horizontal jog of at least one foot at least every ~~50~~fifty linear feet of *wall*. *Walls* shall be constructed so that no block seams are visible and nothing is placed on top of the *wall*. Gates shall be constructed as see-through wrought iron.

(iii) Lighting shall be utilized only when utility personnel are on site.

(12) Application Submittal Requirements

(a) General Requirement

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All applications submitted to the Land Use ~~Department~~ Director shall be in writing. If an application is determined to be incomplete, the Director shall provide notice, within ~~10~~ ten business days of the date the application is submitted, to the company along with an explanation of the application's deficiencies. Electronic submittals will be considered on a case-by-case basis, subject to security requirements.

(b) Transmission Line Facilities

The following information shall be provided:

- (i) Purpose and need for the electric project;
- (ii) Analysis of conformity with the General Plan and the Electric Facilities Plan, as amended or successor plans, and relevant guiding policies;
- (iii) Description of the proposed action and alternative corridors examined;
- (iv) Constraints and opportunities associated with each alternative corridor;
- (v) Electric project location map and aerial photo;
- (vi) Details of typical electric structures (height diameter, phase spacing);
- (vii) Electric project "in service date" and estimated construction start date;
- (viii) Proposed action cost;
- (ix) Within 200 feet along the proposed corridor:
 - A. Existing and proposed land uses and existing zoning along the corridor;
 - B. Location of existing watercourses, drainage channels, and water bodies;
 - C. Location of existing and proposed *streets* and roads;
 - D. Topography, natural features, slopes and floodplains, and cultural resources;
 - E. Visual considerations and general appearance including visual simulations,
 - F. Existing and proposed electric project utility easements (location and width);
 - G. Whether and to what extent public *rights-of-way* will be used, and
 - H. Other environmental considerations, which may be relevant to the electric project such as, but not limited to, information on airport control zones, and flood hazard zones;

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- (x) Discussion of the public input processes used;
 - (xi) Electric and magnetic field profiles,
 - (xii) Landscape restoration plan;
 - (xiii) Feasibility and estimated cost of an underground option, if requested by the City Land Use Director; and
 - (xiv) A list of all known and related approvals required to complete the electric project, regardless of the jurisdiction requiring approval.
- (c) Distribution Line Facilities

The following information shall be provided:

- (i) Purpose and need for the electric project;
- (ii) Statement of conformity with the General Plan and the Electric Facility Plan, as amended or successor plans, and relevant guiding policies;
- (iii) Description of the proposed action;
- (iv) Constraints and opportunities;
- (v) Electric project location map and aerial photo;
- (vi) Details of typical electric structures (height, diameter, configuration);
- (vii) Electric project "in service date" and estimated construction start date;
- (viii) Proposed action cost;
- (ix) Within ~~50~~ fifty feet along the proposed corridor:
 - A. Land uses along the corridor; and
 - B. Whether and to what extent public *rights-of-way* will be used;
- (x) Discussion of the public input processes used;
- (xi) Landscape restoration, if applicable; and

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(xii) Feasibility and estimated cost of an underground option, if requested by the City Land Use Director.

(d) Switching Stations and Substations

The following shall be submitted:

- (i) Purpose and need for the electric project;
- (ii) Analysis of conformity with the General Plan and the Electric Facilities Plan, as amended or successor plans, relevant guiding policies;
- (iii) Description of the proposed action and alternative station sites examined;
- (iv) Constraints and opportunities associated with each alternative;
- (v) Electric project location map and aerial photo with property plat;
- (vi) Evidence of property control or intent to purchase the property;
- (vii) Electric project "in service date" and estimated construction start date;
- (viii) Within a 200 foot radius from property line to include:
 - A. Existing and proposed land uses and existing zoning;
 - B. Location of existing watercourses, drainage channels, and water bodies;
 - C. Location of existing and proposed *streets* and roads;
 - D. Topography, natural features, slopes and floodplains, and cultural resources;
 - E. Visual considerations and general appearance including visual simulations; and
 - F. Other environmental considerations, which may be relevant to the electric project such as but not limited to information on airport control zones, and flood hazard zones;
- (ix) Proposed electric facilities and site design to include a site plan, elevation drawings (fencing and walls), outdoor lighting, signs, vehicular access, parking, revegetation, and landscape plan and terrain management plan (if applicable);
- (x) Discussion of the public input processes used; and
- (xi) A list of all known and related approvals required to complete the electric project, regardless of the jurisdiction requiring approval.

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(13) Fees

Applications shall be accompanied by a nonrefundable fee as established by resolution.

(14) Waivers

(a) The Planning Commission may grant a waiver of the standards set forth in §14-6.2(F) only if the Commission finds that said waiver:

- (i) Is in the best interest of the community as a whole;
- (ii) Will not jeopardize public health, safety and welfare; and
- (iii) Will better serve the purposes contained in §14-6.2(F)(3).

(b) The Planning Commission shall consider the following criteria when granting a waiver:

- (i) The general appearance of the facility,
- (ii) The nature of uses on adjacent and nearby properties;
- (iii) The surrounding topography;
- (iv) The proposed ingress and egress;
- (v) Improved electrical service for Santa Fe; and
- (vi) Such other factors as may be relevant.

(15) Appeals

~~(a) — A decision of the Land Use Department may be appealed by requesting the matter be placed on the next Planning Commission agenda for which all agenda posting, mailing and publication deadlines can be met.~~

~~(b) — A decision of the Planning Commission or the Historic Design Review Board may be appealed as set forth in §14-3.17(A) or as provided by §3-19-11 NMSA 1978.~~ Final actions of the Land Use Director may be appealed pursuant to §14-3.17.

(16) Public Notice

(a) Administrative Approvals

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Fifteen days prior to the submittal of any application at the Land Use ~~Department~~ Director, the company shall provide notification by certified mail, return receipt requested, proof of which is to be included with the application to all property owners within 200 feet of the subject property, exclusive of *right-of-way*. If the property proposed to be used lies within the boundaries of a neighborhood association that has been listed with the Land Use ~~Department~~ Director to such neighborhood association.

(b) Planning Commissions Approvals

For applications requiring Planning Commission approval, the company shall comply with §§14-3.1(F) and (H).

(c) Waivers

For requests for waivers, the company shall comply with §§14-3.1(F) and (H).

(d) Appeals

For appeals to the Planning Commission, notice shall be given as set forth in §14-3.1(H).

(17) Conformity Review

Compliance with §14-6.2(F) serves as the utility conformity review set forth in §14-3.18(A) of this chapter and §3-19-11 NMSA 1978.

(18) Noncomplying Work

Upon order of the Land Use Director, all work which does not comply with the application requirements and specifications for the work, or other requirements of §14-6.2(F), shall be removed or made to comply within ~~30~~ thirty days or sooner if the same pose an immediate threat to the health or safety of the community.

(19) Notification of Sale of Land to City ~~to City~~

The City of Santa Fe shall be notified when a parcel of land owned by the company becomes available for purchase.

(G) Underground Electric, Telecommunications and Cable Utility Lines

(1) Title

Section 14-6.2(G) shall be referred to as the "Underground Electric, Telecommunications and Cable Utility Line Ordinance."

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(2) Authority

Section 14-6.2(G) is adopted pursuant to the following:

(a) The general welfare and police powers conferred upon the City of Santa Fe by §3-17-1 *et seq.* and §3-18-1 *et seq.* NMSA 1978; and

(b) The powers conferred upon the City of Santa Fe by New Mexico Constitution, Article X §§6(D) and 6(E) and the Municipal Charter Act, §3-15-1 *et seq.* NMSA 1978, which have been exercised by the City's adoption of its "Santa Fe Municipal Charter."

(3) Legislative Findings; Purpose

(a) The Governing Body recognizes that it is in the best interest of the health, safety and welfare of all citizens of Santa Fe that the City immediately takes the steps necessary to adopt policies that conserve open skies and improve public accessibility along City sidewalks and City *rights-of-way*.

(b) The Governing Body recognizes that overhead electric, telecommunications and cable utility lines and associated in-ground poles and structures adversely affect the open skies and may impede public accessibility along City sidewalks and City *rights-of-way*.

(c) The Governing Body recognizes that, as a planning and land use matter, overhead electric, telecommunications and cable utility lines detract from orderly and modern planning models.

(d) Underground electric, telecommunication and cable utility lines have the least environmental impact for any neighborhood.

(4) Applicability

Section 14-6.2(G) shall apply to electric, telecommunication and cable utility lines and which are collectively referred to as utility lines. Section 14-6.2(G) applies to electric lines of less than 46 kilovolts unless otherwise specified.

(5) New Utility Lines

All new utilities lines shall be placed underground except as set forth in paragraphs (6) and (7) below.

(a) The developer of any project subject to this Chapter shall be responsible for the undergrounding of those utilities needed to serve the project.

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(b) The utility provider shall be responsible for the undergrounding of all other utilities according to paragraph (7) below.

(6) Governing Body Waiver

(a) The Governing Body, after review by the Planning Commission, may grant a waiver of the standards set forth in §14-6.2(G)(5) if the Governing Body finds, that said waiver:

- (i) Is in the best interest of the community;
- (ii) Will not jeopardize the public's health, safety and welfare;
- (iii) Will better serve the purposes contained in §14-6.2(G)(3).

(b) The Governing Body shall consider the following when granting a waiver:

- (i) The nature of uses on adjacent and nearby properties;
- (ii) The surrounding topography;
- (iii) Improved electrical, telecommunication or cable services for Santa Fe;
- (iv) The cost of placing the utility line underground and all associated costs; and
- (v) Such other factors as may be relevant.

(7) Utility Provider Accounting

(a) Prior to initiating the underground utility project, the utility provider shall present an accounting to the Governing Body regarding:

- (i) The difference in cost for the undergrounding compared to above ground; and
- (ii) What is the anticipated additional monthly cost to City customers based upon customer classification.

(b) The Governing Body may:

- (i) Direct the provider to seek approval of the New Mexico Public Regulation Commission for an additional fee to be paid by all City customers to cover the cost of undergrounding;
- (ii) Allocate City funds to cover the cost or partial cost of undergrounding. Possible funding includes, but is not limited to: general funds, capital improvement program

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funds, special assessment districts, project improvement districts, state legislative monies, grand monies, bond revenues, utility franchise revenues; or other appropriate funding; or

(iii) Authorize the utility lines to be above ground.

(c) In making the decision the Governing Body shall consider the same criteria as set forth in paragraphs (6)(a) and (6)(b) above.

(d) This paragraph (7) shall not apply to undergrounding required of the developer set forth in paragraph (5)(a) above.

(8) Existing Utility Lines

Following adoption of this Ordinance, the Governing Body shall initiate a process in order to:

(a) Identify and prioritize those areas of the City which are most in need of placing existing electric, telecommunication or cable utility lines underground in keeping with the purpose set forth in §14-6.2(G)(3).

(b) Identify appropriate funding sources from City and non-City sources for such projects.

(9) Undergrounding for Public Health and Safety

Following the adoption of this Ordinance, the Governing Body shall consider an ordinance establishing a hearing process and the standards for when the Governing Body may order the undergrounding of existing, new or replacement utility lines of any voltage due to public health and safety reasons. Such determination shall be considered by the New Mexico Public Regulation Commission in approving a state-wide rate increase.

(10) Administrative Procedures

To the extent necessary to carry out the provisions of §14-6.2(G), the Governing Body may adopt administrative procedures and policies by resolution.

(11) Enforceability

To the greatest extent possible, the provisions of §14-6.2(G) shall be construed in a manner most consistent with any and all valid and enforceable franchise agreements executed by and between various entities and the City of Santa Fe.

(12) Effective Date

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Section 14-6.2(G) shall become effective January 1, 2007.

(H) Agricultural Uses

(1) Agricultural uses for noncommercial purposes which are accessory uses to a permitted principal use are permitted in all zoning districts but shall not create a public nuisance and shall meet all other applicable City codes.

(2) Agricultural uses for commercial purposes are restricted as set forth in Table 14-6.1-1; however, the following commercial agricultural uses are specifically prohibited:

- (a) Mink and poultry production; and
- (b) Feedlots.

(I) General Provisions

(1) The Governing Body or Planning Commission may further regulate uses in planned districts, or impose conditions on those uses, when it approves a master plan or development plan.

(2) Additional regulations concerning uses may be located in the master plan or development plan for a particular property.

14-6.3 MULTIPLE PRINCIPAL USES; ACCESSORY USES OR STRUCTURES

~~(A)~~ (B) Multiple Principal Uses
More than one type of principal use may be located within the same building or on the same premises, if each use complies with all applicable provisions of this Chapter.

(B) Permitted Accessory Uses and Structures

(1) General Provision. In addition to the principal use or uses permitted by this Chapter, land and structures may be used for accessory uses, including those specifically listed as permitted accessory uses in Table 14-6.1-1 or in this subsection 14-6.3.

(2) RR, R1-R-6, R-7, R-7(I), R-8, R-9, RC-5, RC-8, ~~R-10, R-21, R-29, M~~, RAC, C-1, C-4, and HZ Districts

- (a) The following accessory uses and structures are permitted in these districts:
 - (i) Home occupations, as provided for in §14-6.3(C)(2);
 - (ii) Noncommercial greenhouses and plant nurseries;

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- (iii) Private garages;
 - (iv) Utility sheds, located within the rear yard only;
 - (v) Children's play areas and play equipment;
 - (vi) Private barbeque pits, private swimming pools;
 - (vii) Private day-care nurseries, kindergartens as set out in §14-6.2(B)(5);
 - (viii) Except in the RR district, accessory dwelling units as regulated in §14-6.3(C)(1);
 - (ix) Other uses and structures customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures; and
 - (x) Accessory structures of a permanent, temporary, or portable nature such as coverings not constructed of solid building materials including but not limited to inflatable covers over swimming pools and tennis courts and such other accessory structures which exceed ~~30~~thirty inches in height from the average ground elevation.
- (b) All accessory uses and structures allowed under the preceding paragraph of this section shall:
- (i) Not involve the conduct of business on the premises, except home occupations;
 - (ii) Be located on the same lot as the permitted principal use or structure or on a contiguous lot in the same ownership;
 - (iii) Not be likely to attract visitors in larger numbers than would normally be expected in a single-family residential neighborhood;
 - (iv) Total *lot* coverage by all structures does not exceed the provisions set forth in Article 14-7;
 - (v) Not be less than ~~5~~five feet from a side or rear *lot* line for an accessory structure of a single story or less, except as otherwise allowed in Article 14-7;
 - (vi) Not be less than ~~10~~ten feet from another *building*. This provision does not apply to accessory uses and structures which are not *buildings*; and

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(vii) Not be less than ~~20~~twenty feet from the front *lot* line, except accessory dwelling units that shall meet the provisions set forth in Article 14-7.

(~~32~~) ~~RM-R-10 through R-29~~ Districts

In addition to the list of accessory uses allowed in paragraph (1) above, greenhouses and plant nurseries also are permitted as accessory uses in this district.

(~~43~~) AC District

The permitted accessory uses and structures for the AC district are the same as for the underlying zoning district.

(~~54~~) C-2 and I-1 Districts

The accessory uses and structures permitted in these districts are those that are:

- (a) On the same premises and in connection with permitted principal uses and structures;
- (b) Dwelling units for occupancy only by owners or employees thereof, including live/work spaces, but not including ~~mobile~~manufactured homes or recreational vehicles;
- (c) Outdoor storage areas, subject to compliance with the standards of §14-6.3(C)(3);
- (d) Telecommunication facilities as set forth in §14-6.2(E).
- (e) Other uses and structures that are customarily accessory and clearly incidental to permitted or permissible uses and structures.

(~~65~~) Business-Capitol District

All permitted and accessory uses allowed in other districts of this chapter are permitted within the ~~Business-Capitol District~~BCD subject to the provisions of this section. In areas encompassed by the boundaries of the ~~Historic~~ Districts, all provisions of those districts shall apply and control, and where inconsistent with the ~~Business-Capitol District~~BCD provisions, the provisions of the ~~Historic~~ Districts shall control.

(~~76~~) I-2 District

(a) The accessory uses and structures permitted in an I-2 district are those which are on the same premises as permitted principal uses and structures and only as required for the conduct of the operation, dwelling units for owners or employees, and other uses and structures incidental and subordinate to the principal use or structure and otherwise

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meeting the requirements of this district, except that ~~mobile~~ manufactured homes or recreational vehicles will not be permitted as accessory uses.

(b) This section does not apply to telecommunication facilities that shall be regulated as set forth in §14-6.2(E).

(87) Business and Industrial Park District

(a) This section does not apply to telecommunication facilities that shall be regulated as set forth in §14-6.2(E).

(b) The accessory uses and structures permitted in a ~~Business and Industrial Park~~ BIP District are those that support the operation of a permitted principal use. Such uses may exceed the floor area of the permitted principal use. Examples of permitted accessory uses and structures for the ~~Business and Industrial Park~~ BIP district include but are not limited to:

(i) Dwelling units for owners, tenants or employees;

(ii) Warehouses and storage buildings, provided that such buildings shall be incorporated into the primary building design and shall be constructed of materials of comparable quality and appearance;

(iii) Outdoor storage lots and yards, provided that areas for outdoor storage, trash collection, and loading shall be fully screened and constructed of materials of comparable quality and appearance to the primary use structure; and provided that materials stored in outdoor storage lots and yards shall not exceed the height of the enclosure; and

(iv) Parking structures.

(98) SC Permitted Accessory Uses and Structures

(a) The uses and structures permitted in SC districts are those which are customarily accessory and clearly incidental and subordinate to permitted principal uses and structures ~~as stated and restricted above~~ and which do not involve operations or structures not in keeping with the character of the district; provided that the waste products shall be kept in closed containers and that the containers shall not be visible from residential areas; from portions of the premises customarily open to customer parking, customer-pedestrian or automotive traffic, from automotive traffic or from public ways.

Comment [CLG27]: does not make sense (was previously relocated)

(b) This section does not apply to telecommunication facilities that shall be regulated as set forth in §14-6.2(E).

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(B) Mobile Homes and Recreational Vehicles Prohibited as Accessory Uses

Mobile homes and recreational vehicles shall not be permitted as accessory structures in any district.

(C) Standards for Specific Accessory Uses

(1) Accessory Dwelling Units

Accessory dwelling units:

- (a) Are required to meet parking standards as set forth in § 14-8.6;
- (b) Shall be regulated as per City regulations and policies regarding City utilities;
- (c) Are exempt from the density restrictions set forth in this chapter; however, only one accessory dwelling unit shall be permitted per lot of record;
- (d) Shall be built only when permission to construct is granted to the owner-occupant of the principal dwelling unit;

(e) Shall have a ~~footprint~~ lot coverage not exceeding the square footage of the ~~footprint~~ lot coverage of the principal dwelling unit, or not more than 1500 square feet whichever is less;

Comment [U28]: Use of the term "lot coverage" in place of "footprint" will allow eaves and porches within 30" of the accessory unit to be excluded from the 1500-foot limit.

(f) Shall be limited to one story and shall not exceed ~~15~~ fifteen feet to the top of the parapet or to the highest point of the roof if there is no parapet;

(g) Shall be of the same architectural style as the principal dwelling unit;

(h) The owner of the property shall occupy either the principal dwelling unit or the accessory dwelling unit and may rent the other unit. The principal dwelling unit or the accessory dwelling unit may not be rented for less than ~~30~~ thirty days except as provided in §14-6.2(A)(6)(a); and

(i) An affidavit shall be recorded prior to issuance of any construction permit for an accessory dwelling unit stating that the property owner agrees to comply with these provisions. An affidavit filed prior to the adoption of Ordinance No. 2008-5 (ordaining §14-6.2(A)(6)(a) and amending §14-6.3(C)(1)) remains in effect and is automatically amended to reflect the provisions of Ordinance No. 2008-5.

(2) Home Occupations

(a) Purposes

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The purposes of the Home Occupations Ordinance are to increase the economic vitality of the cCity; provide increased worker independence, self-sufficiency and motivation; decrease traffic congestion in the cCity through the enhancement of community; increase the safety of the neighborhoods by promoting neighborhood activity; integrate the ideas of working and residing in the same environment; protect the stability and character of the neighborhood; and encourage neighborhood participation in the determination of a successful balance between neighborhood residents and home-based businesses.

(b) Standards

Home occupations are permitted on all property, including residential or mixed-use residential/commercial, provided that the following standards are met:

(i) General Standards

A. The home occupation shall involve the primary sale of goods or services in connection with such home occupation, including:

1. Goods which are prepared, produced or grown on the premises; or
2. Services which are developed on the premises and provided on or off the premises; or
3. The sale of goods which are not produced on the premises and which are only distributed off the premises; or
4. Repair services that take place solely within the home.

B. The home occupation shall be located on the same lot as the permitted principal use or structure or on a contiguous lot in the same ownership.

C. The home occupation shall be conducted by a person residing on the premises in which the home occupation is conducted. Not more than two persons, other than members of the family residing on the premises, in which a home occupation is conducted, shall be regularly engaged in such occupation. Residency shall be established by any standard identification that proves residency such as a driver's license, passport or voter registration, or other documentation that proves that the person conducting the home occupation has resided at the site of the occupation for one month or more.

D. Except for on-street parking, as set forth in this section, a home occupation shall be completely contained within the property lines of the *lot* on which the home occupation is located. A home occupation shall be in compliance with the

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performance standards set forth in §10-4 and not produce any offensive noise, vibration, smoke, dust, odors, heat, gas, glare, electrical interference, nor shall it otherwise create a risk to health, safety or property of residents and occupants of adjacent and neighboring properties. The storage of firearms, ammunition, fireworks or similar explosives for sale or service is prohibited. Mechanical or electrical equipment which is incidental to the home occupation may be used provided it does not create visible or audible interference in radio, computer or television receivers or cause fluctuation in voltage of the premises or neighboring premises. Depending upon the nature of the home occupation, City staff may require proof of compliance with the above, prior to issuance of a business registration.

E. Employees, customers or clients, or deliveries shall not enter the premises between the hours of 7:00 p.m. and 8:00 a.m. weekdays and 7:00 p.m. and 10:00 a.m. weekends. Depending upon the nature of the home occupation, ~~City staff~~ the Land Use Director may reduce the hours of operation. Deliveries ~~shall be~~ are limited to vehicles that do not exceed 11 feet in height and 20 feet in length.

(ii) Structural Standards

A. Not more than 25% of the gross floor area of the dwelling unit, including accessory buildings, shall be used to conduct a home occupation. In determining the gross floor area of an accessory dwelling unit, no more than 1000 square feet shall be used. ~~Stricter federal regulations may apply.~~

Comment [U29]: Land Use staff has consistently questioned the rationale for including a percentage of the floor area of an accessory dwelling unit when calculating the size allowed for the principal unit's home occupation. Staff would support an amendment stating that the floor area of accessory units is excluded from that calculation.

B. Nothing incidental to the conduct of a home occupation shall be constructed, installed, placed, parked or stored on a residentially zoned lot on which a home occupation is being conducted if it is visible from any adjacent or neighboring property and if it is not in keeping with the residential character of the neighborhood(s) surrounding the lot except for signs and parking set forth below. Any person who conducts a home occupation and applies for a building permit shall demonstrate to ~~City staff~~ the Land Use Director that the proposed construction does not violate any section of the Home Occupation Ordinance.

Comment [CLG30]: what would these be?

C. Signs shall not exceed one, and the area of such sign shall not exceed one square foot.

(iii) Parking Standards

A. Depending upon the nature of the home occupation, the following parking spaces shall be provided on the lot:

1. If there are no employees who reside off the premises and customers or clients do not come to the premises, only parking for the dwelling unit is required;

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2. If there are no employees who reside off the premises and customers or clients come to the premises, at least one parking space shall be provided on the lot for every 400 square feet of the gross floor area of such premises used for the conduct of the home occupation, in addition to that required for the dwelling unit;

3. If there are any employees who reside off the premises and customers or clients do not come to the premises, at least one parking space shall be provided on the lot for every employee simultaneously working, in addition to that required for the dwelling unit;

4. If there are employees who reside off the premises and customers or clients come to the premises, at least one parking space shall be provided on the lot for every employee simultaneously working and at least one parking space shall be provided on the lot for every 400 square feet of the gross floor area of such premises used for the conduct of the home occupation in addition to that required for the dwelling unit;

B. No more than one vehicle, relating to a home occupation, may be parked at any one time on the streets adjacent or proximate to the lot on which the home occupation is being conducted; however, in light of the character of the surrounding neighborhood, ~~City staff~~ the Land Use Director may prohibit any vehicles used in connection with a home occupation from parking on-street. This section regulates parked vehicles not associated with the residential use of the dwelling unit.

(iv) Other Requirements; Inspections

A. The home occupation shall comply with all other applicable codes, including without limitation, the currently adopted fire and building codes, the American Disabilities Act, and the City's wastewater requirements. Depending upon the location of the home occupation, private covenants enforceable by those governed by the covenants may apply.

B. Inspections by the City ~~shall be~~ is required prior to issuance of the business registration for the home occupation only for those who home occupations where the following occur: employees reside off the premises come to the premises; customers or clients come to the premises; or goods for sale are prepared, produced, grown or stored on the premises. The City reserves the right to inspect all home occupations for code compliance at such times as the City receives a complaint or has reason to believe the City's codes may be violated.

(v) Notice; Registration; Violations; Complaints; Variances; Appeals

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A. Any person proposing to conduct a home occupation that will have more than one employee who will reside off the premises or that will have customers or clients coming to the premises, shall as part of their application be required to give notice, certified mail return receipt requested, of the home occupation application to all residents and property owners within 150 feet of the premises and nearby neighborhood association. The notice shall include the nature of the home occupation, the number of employees, whether customers or clients will be involved, the willingness of the applicant to meet with the neighboring residents and property owners and that the neighboring resident and property owner may review the application at the City offices. The neighboring residents and property owners have ~~15~~ fifteen days from the date the notice was mailed to review the application. ~~Staff~~ The Land Use Director shall collect and evaluate this public comment that shall be used in determining whether the home occupation shall be approved and what restrictions if any shall be placed on it.

B. Each person who engages in a home occupation shall register the home occupation with the City on forms designated by the City, shall provide such information as required by the forms to verify compliance with the regulations, and shall renew such registration each year.

C. No person shall conduct a home occupation in violation of this section. In addition to any other remedies available, the City may revoke the business registration for the home occupation or the certificate of occupancy for any building in which a home occupation is being conducted in violation of this section. Failure to comply with the provisions of this section shall be subject to penalty as provided in Article 14-11.

D. Any person who ~~believes to be~~ is aggrieved by an approved ~~the~~ h Home Occupation business Ordinance may file a complaint with the City. Within ~~30~~ thirty calendar days of the City's receipt of such a complaint, the City will investigate the complaint and issue a written decision as to whether the home occupation against which the complaint was filed violates or complies with this section. If a violation is found, ~~City staff~~ the Land Use Director shall determine the actions that have been or should be taken to address the violation. Complaints shall be kept on file and be open to the public. When investigating complaints, ~~staff~~ the Land Use Director shall review the file for prior complaints.

~~E. Variances to the standards set forth in this section shall be heard by the Board of Adjustment as per §14-3.16.~~

~~F. Any person aggrieved by a final action of the Land Use Director, with respect to a home occupation, may appeal that final action pursuant to §14-3.17.~~

~~(e) Exclusions~~

Comment [U31]: These provisions are redundant.

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~~Home occupations otherwise authorized under this section shall not be allowed in any residential area where there are legally binding restrictive covenants prohibiting commercial activities.~~

(d) ~~Semi-Annual Report~~

~~The City Manager shall make a semi-annual report to the Governing Body regarding the implementation, management, and enforcement of this chapter. The Governing Body shall hold a semi-annual public hearing for the purpose of receiving public input regarding concerns about the implementation, management, enforcement, and fiscal impact of this chapter.~~

Comment [U32]: It is not clear that the City has proper authority to enforce private covenants. Although city staff attempts to coordinate enforcement with affected neighborhood associations, there are some inconsistencies in the current practices.

(3) Outdoor Storage Areas for Merchandise

(a) Such uses shall be enclosed by solid *walls* at least six feet in height, with access only through solid gates that shall be kept closed when not in use.

(b) No objects shall be stacked or stored higher than the minimum height of the enclosing *wall* required in paragraph (C)(3)(a) of this section.

Comment [U33]: Semi-annual reporting is no longer done by staff, and seems unnecessary.

14-6.4 TEMPORARY USES OR STRUCTURES

(A) **RR, R-1 through R-6, R-7, R-7(I), R-8, R-9, RC-5, RC-8, RM-10, R-21, R-29, RAC, C-1, C-4, and HZ Districts**

The following temporary uses and structures are permitted in these districts: Temporary structures and operations in connection with and on the site of *buildings* or land development, including grading, paving, installation of utilities, erection of field offices, erection of structures for storage of equipment and building materials and the like; provided that no such permit shall be for a period of more than ~~12~~ twelve months, renewable for periods of not more than ~~6~~ six months. In addition the area occupied by the temporary structures and operations shall be screened against fumes, noise and unsightliness.

(B) **Mobile Home, Temporary Placement**

In any district where temporary, single-family occupancy of a mobile home on an individual lot is permitted as a ~~special exception~~ special use permit by the Board of Adjustment, the following minimum standards shall apply:

(1) The mobile home unit shall be skirted;

(2) The rental or lease of ~~mobile~~ manufactured homes used as temporary single-family residences on individual *lots* ~~shall be~~ is prohibited; and

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(3) Minimum requirements for *lot* size, front, side and rear yards and all other standards pertaining to single-family residential land use set forth in this chapter shall apply. Upon the granting of a ~~special exception~~ special use permit by the Board of Adjustment, a temporary permit may be issued by the Inspections and Enforcement Office for a period of ~~12~~ twelve months, subject to satisfactory compliance with the above requirements. This permit may be renewed one time only for a period of up to ~~90~~ ninety days by the Land Use ~~Director~~ Department.

(C) Temporary Structures Treated as Permanent Structures

Structures that remain in place for a period of more than thirty days -in a nonresidential district or ninety days in a residential district are subject to the same provisions of this chapter as permanent structures, whether or not they are permanently affixed to the ground or constructed of lightweight or non-durable materials.

Comment [U34]: Intended to address problems regulating "portable" sheds and carports in residential districts, tent structures in commercial districts. Corresponding correction will be made to definition of "structure, temporary."