

**Luna County Ordinance No. 37, Second Revision**

**LUNA COUNTY BUILDING, LAND USE, DEVELOPMENT AND  
PERFORMANCE STANDARDS AND GROUND WATER PROTECTION  
ORDINANCE**

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**LUNA COUNTY BUILDING, LAND USE, DEVELOPMENT  
AND PERFORMANCE STANDARDS, AND GROUND WATER PROTECTION  
ORDINANCE NUMBER 37, SECOND REVISION**

**AN ORDINANCE FOR THE ESTABLISHMENT OF A SYSTEM OF LOCAL INSPECTION, PLAN REVIEW, APPROVAL, AND COLLECTION OF FEES FOR ALL BUILDING PERMITS ISSUED ON BEHALF OF THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION, AND TO PROVIDE FOR COORDINATED INSPECTION AND REVIEW OF ALL CONSTRUCTION ACTIVITIES, UTILITY INSTALLATION, AND MOBILE /MANUFACTURED HOME INSTALLATION, AND FOR INSPECTION WITHIN LUNA COUNTY, AND TO PROVIDE FOR THE PREVENTION OF UNSIGHTLY CONDITIONS IN LUNA COUNTY, AND THE SCREENING OF SALVAGE YARDS, AND THE SETTING OF STANDARDS FOR THE MAINTENANCE AND REPAIR OF ALL PROPERTY, BUILDINGS AND OTHER STRUCTURES WITHIN LUNA COUNTY, AND THE ABATEMENT OF NUISANCES CAUSED BY NON-COMPLIANCE WITH THE STANDARDS SET OUT IN THIS ORDINANCE, AND FOR THE PROVISION OF STANDARDS FOR THE USE AND DEVELOPMENT OF LANDS IN LUNA COUNTY, FOR THE PROTECTION OF GROUND WATER AND OTHER NATURAL RESOURCES AND FOR THE PROVISION OF PENALTIES, CIVIL REMEDIES, SEVERABILITY, AND EFFECTIVE DATE.**

WHEREAS, the health, safety and welfare of the residents of Luna County require the regulation of the erection, construction, maintenance, enlargement, moving, removal, conversion, occupancy, equipment, use, height, demolition, alteration, and repairs, of all buildings and/or structures, to include sites, installation, set up, maintenance, alteration, and repairs, etc. of all mobile homes and manufactured homes within Luna County; and

WHEREAS, the Luna County Board of Commissioners finds that the unsightly and unhealthy conditions caused by littering, the improper disposal and dumping of refuse, the dumping of refuse upon public rights of way and public lands, the poor maintenance and repair of property, including buildings and other structures, and the proliferation of unscreened salvage yards result in a significant detriment to the health, safety, and prosperity of Luna County and its residents;

WHEREAS, the Luna County Board of Commissioners deems it necessary and desirable to prescribe standards to help maintain property values and the property tax base in Luna County, and to provide an aesthetically pleasing community; those are necessary to supplement voluntary anti-litter and beautification measures to abate unsightly and unhealthy accumulations of debris and trash including waste fires;

WHEREAS, the repair and refurbishment of manufactured or mobile homes in close proximity to federal, state or paved county roads is a visual blight on the landscape of Luna County, discouraging revenue producing economic development.

WHEREAS, the Luna County Board of Commissioners finds it necessary and desirable to prescribe regulations to guide the future growth and development of the County and to protect natural resources in accordance with the Comprehensive Land Use Plan, the provisions of Ordinance 17, An Interim Land Use Policy and any other official plans adopted by the County;

WHEREAS, the protection of groundwater supplies as well as the surface environment has become a critical issue in the past ten (10) to fifteen (15) years. It will become more critical as greater development pressures are put on the County's natural resources, particularly water supplies. These water concerns are also directly related to minimum lot size.

The State Engineer's Office has developed a formula to help determine a minimum lot size that either will be adequate to ensure that the water supply will not be contaminated by septic system

effluent, or a lot size calculated using aquifer parameters that determine water availability. That formula is:

$$MLS = W/A$$

where MLS is the minimum lot size in acres

W is the water withdrawal required per lot in acre feet per year, and,

A is the water available expressed in acre feet per acre per year.

The water available (A) is calculated based on the water in storage (S).

The water in storage is calculated using the formula:

$$S = (AC)(SY)(ST)(RL)(RC)$$

AC is the size of the tract in acres

SY is the specific yield expressed as a decimal percent

ST is the saturated thickness in feet of the water bearing formation

RL is the reliability factor expressed as a decimal percent to reflect uncertainties about aquifer performance

RC is the recovery factor expressed as a decimal percent that reflects how much of the water in storage may be practically recovered.

The water in storage (S) is converted to water available (A) using the life expectancy (Y) of the aquifer in the following formula:  $A = [S/(AC)(Y)]$ .

These formulae were applied to several of the old platted lots known as “Deming Ranchettes” using known data, some provided through the recently completed Southwest New Mexico Regional Water Plan. The reliability factor was the greatest variable. The size of the tract of land also varied. We applied both 40 and 60 year life expectancies. The calculations for the various ranchettes indicated a minimum lot size that ranged from 1.4 acres to 2.3 acres. When a reasonable but conservative reliability factor was used (0.6), with a 60 year life expectancy, the norm for calculated minimum lot size was 1.9 acres.

Coupled with the recent research on septic systems and the findings developed using the State Engineer’s Office formulae, a minimum lot size of 2.0 net acres would appear appropriate for Luna County and would serve the health, safety and general welfare of Luna County citizens.

Recent studies by the New Mexico Environment Department (NMED) indicate that, for the most part, lots with average lot densities of 0.84 acres are insufficient to absorb and disperse the waste created through septic systems. In fact, such lot densities have caused ground-water contamination (McQuillan, Dennis, Tom Brandt, and Gary Beatty, Hydrogeologic Analysis of On-Site Septic System Lot Size, New Mexico Environment Department, Field Operations Division, (December, 2004), 1.).

In 2005, the NMED published a map of New Mexico showing “ground-water contamination by septic systems” in each county. Map 1, on the following page, shows that in Luna County ground-water contamination by septic systems have been confirmed in the area around Deming.

Also, in 2005, the NMED was successful in having the State Legislature pass regulations that will now require lots to be 0.75 acres in area in order to obtain a septic tank permit. The NMED may issue septic tank permits to smaller lots, but not smaller than 0.50 acres and only with a more advanced sewage treatment system being used.

The NMED also has developed a concept it has called “Areas of Concern”. These areas exhibit the following characteristics:

- “A water table aquifer (includes both unconfined and semi-confined conditions) with a vadose (water or solutions in the earth’s crust lying above the permanent ground water level)

zone thickness of 100 feet or less, containing no soil or rock formation that would act as a barrier to saturated or unsaturated wastewater flow;

- Sites within one mile of known groundwater plume of anthropogenic anoxic or nitrate contamination within an aquifer, provided that the site overlies the same aquifer;
- An aquifer overlain with fractured rock;
- An aquifer in karst terrain; or
- An alluvial aquifer that discharges to a gaining stream located within 200 feet of the proposed disposal-field or seepage-pit location.” (Source: “Lots Less than ¼ Acre—Areas of Concern”, New Mexico Environment Department, NMED web site, 2005).

Lee Wilson and Associates in 1989, on behalf the NMED, prepared aquifer sensitivity maps. These maps are being updated to better illustrate the “areas of concern”. The “areas of concern” map for Luna County (Map 2) follows Map 1.

Map 2, “areas of concern” illustrates in red color those areas with groundwater less than 100 feet deep and with 2000 mg/L or less TDS (total dissolved solids). These are “areas of concern” (highly sensitive aquifers) based on the depth to groundwater criterion. These “areas of concern” cover about one third of Luna County. The remainder of the County, for the most part, is classified as being moderately sensitive aquifer.

It should be noted that much of the area in close proximity to both the City of Deming and the Village of Columbus are “areas of concern”. In addition, these areas contain many of the Deming Ranchettes and other antiquated subdivisions. These findings are more supportive of the requirement for minimum lot sizes of two (2.0) net acres for new development, and for creating development criteria to regulate the development of older subdivisions in which the lots are less than 2.0 net acres in area.

WHEREAS, in the 1960’s and early 1970’s thousands of acres of land in Luna County were platted to create subdivisions of approximately 80,000 lots, most of which are one-half acre in area, some smaller. These lots were platted at a time when there were few state-wide subdivision standards. The 1963 New Mexico Statutes required counties to review subdivision plats, but the emphasis was on road access and consumer issues such as the developer’s financing requirements and truth in advertising.

Consequently, these lots were platted under subdivision standards much less stringent than today’s standards. Also, they were developed at a time when little was known about the possible negative impacts on the quality of the underground aquifers caused by septic tank and sewage leach bed systems developed on one-half acre lots. In addition, these lots were created with nominal regard to environmental considerations, water availability, and water quality, potential for flooding and erosion, and solid waste disposal.

These subdivisions have little or no infrastructure other than a road graded through the desert and inadequate public services.

There are no community water systems, nor are there any community sewage systems; consequently, these lots rely on wells for water and septic tanks for sewage disposal.

It was not until 1973 that counties were required to adopt their own regulatory standards with regard to environmental matters, water availability, water quality, liquid waste disposal, and other matters.

In addition to these lots, there are other subdivisions platted as recently as the early 1990’s that have developed only to a minor extent. Some of these subdivisions contain lots ranging in area from one-half acre to ten acres.

One of the most significant of the many problems associated with these old subdivisions is the re-sale and development of these lots at the present time. Some of these properties are not easily accessible; some properties have no electrical service within miles; and, some properties

may be in areas where the cost of digging a well would be prohibitive because of the depth to the water saturated layer of the aquifer. The buyers are never informed of potential problems. The probable negative impacts on both quality and quantity of groundwater are better defined today. Continued and accelerated development of any significant number of these antiquated subdivisions will have serious repercussions on the availability and quality of water supplies.

The development of these lots and more recent subdivisions on small lots and served only by wells and septic tank systems will likely contaminate ground water sources and create a threat to the health, safety and general welfare of all Luna County residents. It is a situation that is creating emerging problems related to health and safety which requires immediate and comprehensive action by the County.

Luna County also does not have the financial resources to provide community water and community sewerage systems, or to upgrade roads and to provide for adequate drainage, or to develop flood control devices to serve all these lots if they were to be developed to platted densities.

WHEREAS, it is deemed necessary and desirable to ensure orderly and integrated development within Luna County in compliance with policies and guidelines set out in the Luna County Comprehensive Land Use Plan and all other County policies and regulations;

WHEREAS, the Luna County Board of Commissioners recognize that historically Luna County is an agriculture community and have therefore adopted past policies that promote, rather than encumber agricultural activities, by passage of this ordinance do hereby exempt agricultural activities from this ordinance, except those activities stipulated specifically for agriculture in the International Building Code and New Mexico Building Code; and, except for those agricultural activities that may be a nuisance in that they negatively affect the safety and the preservation of the health of Luna County inhabitants;

WHEREAS, Luna County remains essentially rural in nature in which open space and the natural landscape predominate over the developed environment; rural lifestyles and rural based landowners are fostered; the conversion of undeveloped areas into sprawling low density development is reduced; the extension of urban governmental services is minimized.

WHEREAS, Section 3-17-6, NMSA 1978 provides that a municipality may adopt by ordinance the conditions, provisions, limitations, and terms of a building code, plumbing code, electrical code fire prevention code, and any other code not in conflict with the laws of New Mexico;

WHEREAS, Section 3-18-5, NMSA 1978 provides for a municipality to remove dangerous buildings or debris;

WHEREAS, Section 3-21-1 et. seq. NMSA 1978 establishes municipalities and counties as zoning authorities and authorizes municipalities and counties to enact zoning regulations;

WHEREAS, Section 4-37-1 NMSA 1978 provides all counties are granted the same powers as municipalities, and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of Luna County and its inhabitants; and,

WHEREAS, Section 60-14-4.N, NMSA 1978 provides that counties may enter into agreements with the New Mexico Manufactured Housing Division to provide for the inspection of manufactured homes by employees of the county under the supervision and control of the Division, and

**NOW, THEREFORE, BE IT ORDAINED BY THE LUNA COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:**

## **ARTICLE 1 GENERAL PROVISIONS**

### 1.1 SHORT TITLE

This Ordinance shall be known as the “Land Use and Development Ordinance”, and shall be referred to herein as “this Ordinance”.

### 1.2 JURISDICTION

This Ordinance shall govern all buildings, structures, manufactured homes, mobile homes, recreational vehicles, salvage yards, properties, and generally all use and development, within the County, but not within the boundaries of municipalities.

### 1.3 INTERPRETATION AND CONFLICT

The regulations provided herein are held to be the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, or abrogate or annul any other valid ordinance or statute. In the event the provisions of this Ordinance conflict with other County rules, regulations or ordinances pertaining to the subject matter herein, the provisions of this Ordinance shall prevail.

### 1.4 MEANING OF TERMS LUNA COUNTY PLANNING DIRECTOR, LUNA COUNTY PLANNER, COUNTY PLANNING DIRECTOR, COUNTY PLANNER

Wherever the terms “Luna County Planning Director”, “County Planning Director”, “Luna County Planner”, or “County Planner” appear in this Ordinance they shall be read and understood as including any other person or position authorized by the County Manager or the County Commission to administer or otherwise carryout the requirements of this Ordinance.

### 1.5 DISCLOSURE REQUIRED OF ALL SELLERS OF PROPERTY IN LUNA COUNTY

Any person, as defined in this Ordinance, who, in any manner and by any means, advertises or promotes the sale of any undeveloped property in Luna County, or engages in any manner or by any means in the sale of any undeveloped property in Luna County, shall include in the advertisement or promotion in the Luna County Planning Department pamphlet describing the provisions of Luna County Ordinance No. 37. This pamphlet shall also identify all sections that pertain to “grandfathered” or allowance of non-conforming uses. For purposes of this Article 1.5, undeveloped property shall mean any real estate that has no dwelling thereon for residential use.

## **ARTICLE 2 DEFINITIONS FOR THE PURPOSE OF THIS ORDINANCE**

Any word or term not defined in this Ordinance shall have the meaning ascribed to it in their ordinary accepted meaning within the context with which they are used.

**Acceptable:** means:

- a) accepted by the Luna County Building Official, or New Mexico State Building Official, with respect to matters set out in this Ordinance;
- b) accepted by the Luna County Fire Marshall, or other authority as set out in a) or b) of this definition, with respect to matters under the National Fire Protection Association, Fire Protection Code; and,
- c) accepted by the Luna County Code Enforcement Officer with respect to the standards set out in this Ordinance.

**Accessory Building or Use:** a detached subordinate building or structure, or a subordinate use, the use of which is incidental to and customarily found in connection with the principal building or use, located on the same lot or site as the principal building or use, provided such accessory building or use is not used for human habitation.

**Addition:** an extension or increase in floor area or height of a building or structure.

**Advanced Liquid Waste System:** means any process of wastewater treatment that removes a greater amount of contaminants (nitrogen reducing system as defined and approved by the New Mexico Environment Department Wastewater Technical Advisory Committee) than is accomplished through primary treatment; advanced treatment may include physical or chemical processes.

**Agriculture:** An agricultural use or activity requires a tract containing five (5) or more contiguous acres in active, current use for the production of farm crops for sale and profit, including vegetables, fruit, cotton, grain, and other crops and the processing of crops to the generally recognizable minimum level of marketability and storage thereof on the premises; the open range grazing of livestock or irrigated pasture for grazing livestock; animal and poultry husbandry, dairy operations, floriculture and horticulture; and, accessory uses customarily incidental to agricultural activities. Provided further that agriculture does not include commercial slaughter houses, meatpacking plants, fertilizer yards, or other similar animal related uses.

**Agricultural Building:** a structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.

**Alter or Alteration:** any change, addition or modification in construction occupancy of a building or structure.

**Approved:** with respect to materials and types of construction, refers to approval by the building official as the result of investigation and tests conducted by the building official, or by reason of accepted principles or tests by recognized authorities, technical or scientific organizations.

**Baled Tire or Tire Bale:** a method of volume reduction of waste tires, whereby whole or cut tires are compacted into a bundle and then banded together to form a tire bale. Baled tires shall not be considered processed tires and shall be defined as solid waste, unless they incorporated into some beneficial use project.

**Basement:** a story with more than fifty percent (50%) of its perimeter below grade.

**Beneficial Use:** also described as the secondary use of waste tires means the use or application of waste tires or processed tires in a manner that provides a benefit to an end-user and that does not pose a threat to the environment or to public health and safety. Use of waste tires or processed tires primarily as a means for land disposal shall not be considered a beneficial use.

**Boarding House:** A building other than a hotel or motel where, for compensation and by prearrangement for definite periods, meals, or lodging and meals, are provided for three (3) or more persons, but not exceeding twenty (20) persons.

**Building:** any structure used or intended for supporting or sheltering any use or occupancy.

**Building, Existing:** a building erected prior to the adoption of the IBC, NMBC, or one for which a building permit has been issued.

**Building Official:** the officer, or official, or inspector or other designated authority charged with the administration and enforcement of any Code, or the building official's duly authorized representative.

**Burial:** means the process of interring human remains.

**Camp Trailer:** See Recreational Vehicle.

**Cemetery:** means a place dedicated to and used and intended to be used for the permanent interment of human remains.

**Certificate of Occupancy:** a completion certificate issued to the property owner by the LCBO or a New Mexico State Building Official prior to use or occupancy of a building, residence or structure, evidencing the fact that the required levels of construction and/or installation, have been met.

**Certificate of Compliance:** a completion certificate issued to the property owner by the LCBO or a New Mexico State Building Official evidencing the fact that the requirements of this ordinance as set forth in Article 6: Property Standards, have been met, or the requirements of Article 4: for the installation of manufactured homes have been met.

**Cluster System:** An advanced wastewater collection and treatment system under some form of individual or common ownership and management that provides treatment and dispersal/discharge of wastewater from one or more dwelling units or buildings, usually not more than ten (10) dwelling units or buildings, but less than an entire community.

**CID:** Construction Industries Division.

**Code:** a standard that is an extensive compilation of provisions covering broad subject matter or that is suitable for adoption into law, any adopted uniform code pertaining to construction activities.

**Code Enforcement Officer:** the person designated by Luna County to enforce various County codes or ordinances.

**Community Liquid Waste System:** A liquid waste system or sewerage system, publicly or privately owned and operated, including collection and treatment facilities constructed to serve one or more lots.

**Community Water System:** A water system or utility, publicly or privately owned, that relies on surface and/or groundwater diversions other than wells permitted by the State Engineer under Section 72-12-1, NMSA, 1978, and that consists of common storage and/or distribution facilities operated for the delivery of water to multiple service connections. A community water supply system shall have sufficient water rights to serve all lots within the community. A community water system shall include mutual domestic water associations established in accordance with New Mexico law.

**Contiguous:** refers to adjacent lots or parcels of land sharing a boundary line or separated only by a road, right-of-way or easement.

**County:** Luna County, New Mexico.

**County Commission:** the Board of County Commissioners of Luna County.

**County Flood Plain Manager:** the official, officer, or person certified by the New Mexico Flood Plain Managers' Association and authorized by Luna County to administer and enforce the Luna County Flood Plain ordinance.

**Cut Tire:** a waste tire from which the tire face, tread, or sidewall has been cut or removed for beneficial use. A cut tire shall consist of pieces greater than 18 inches on any one side.

**Development:** the use of any land; the carrying out of any building activity including construction, reconstruction, conversion or enlargement of any building or structure; the making of any material change in the use, or intensity of use, or appearance of any building, structure, or land; the establishment of a

commercial parking lot or the dividing of land into lots, blocks, or parcels, including the construction of roads, the installation of water, sanitary sewer and stormwater management facilities or other utilities.

**Dormitory:** A room for sleeping; a large room containing numerous beds; a residence hall providing rooms for individuals or groups usually without private baths.

**Dwelling:** any building or portion thereof, which is designed or used exclusively for residential purposes.

**Dwelling Unit:** A room or group of rooms for the domestic use of one or more individuals living as a single, independent housekeeping unit, occupied or intended for occupancy by one household or family with cooking (not more than one kitchen), eating, sleeping, living, and sanitary facilities.

**Dwelling Unit, Accessory:** A self contained living quarter attached to, or detached from, or under the same roof as the main or principal dwelling, located on the same site as the main or principal dwelling created by:

- a) the conversion of an existing single family dwelling; or
- b) the construction of an addition to an existing single family dwelling; or
- c) the construction of a detached structure which is subordinate to the main of principal dwelling.

The gross floor area of any such accessory dwelling unit shall be no larger than 50% of the gross floor area of the original main or principal dwelling.

**Dwelling, Apartment or Dwelling Multiple:** a building or portion thereof that contains three (3) or more dwelling units, and for purposes of this Ordinance, includes residential condominiums. .

**Dwelling, Single Family:** a building designed for occupancy by no more than one family.

**Dwelling, Two Family:** a building designed for occupancy by no more than two families.

**Means of Egress:** a doorway, hallway, corridor, exterior passageway or balcony, lobby, stair, ramp, or other facility or combination thereof, provided for the unobstructed passage or the unobstructed escape of persons from a building, dwelling unit, room or contained open space, to a public street, lane, yard or other open space protected from fire exposure from the building at grade level. Egress includes exits and access to exits as defined by the International Building Code or the New Mexico Building Code.

**End User:** an industry, utility, business, entity or individual that receives whole waste tires or processed tires and uses them for a raw material in a manufactured product, for energy recovery, or other beneficial use. A tire processor shall not be considered an end user.

**Family:** One (1) or more persons occupying a dwelling unit and living as a single housekeeping unit as distinguished from a group occupying a boarding house, dormitory, lodging house, or hotel, as herein defined.

**Fire Marshall:** the Luna County Fire Marshall or a person discharging the duties of Fire Marshall.

**FPC:** Fire Prevention Code.

**Flood Hazard Boundary Map:** an official map issued by the Federal Emergency Management Agency, where the areas within special flood hazards are designated.

**Flood Prone Area:** an area where a temporary condition of partial or complete inundation of normally dry land results from the unusual and rapid accumulation or runoff of surface waters.

**Footing:** that portion of the foundation of a structure that spreads and transmits loads directly to the soil or piles.

**Freight Trailer:** means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor, and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but freight trailer does not include manufactured homes, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight.

**Grade Level:** the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.

**Grave:** includes a lot, plot or burial space and means a space of ground used for, or intended to be used for, the permanent interment of human remains.

**Gross Vehicle Weight:** means the weight of a vehicle without load, plus the weight of any load thereon.

**Habitable:** as applied to any form of housing, such as manufactured homes, site built homes, or mobile homes, means that there are no known defects, damage or deterioration to the home which creates a dangerous or unsafe situation or condition. All plumbing, heating and electrical systems are in safe working order and must meet all applicable codes.

**Hotel:** A building used as an abiding place of more than twenty (20) persons, who are lodged with or without meals for compensation.

**Home Owner's Association:** an entity which must incorporate under the laws of the State of New Mexico and be in good standing thereon in order to have standing to receive official notice of land use and subdivision proceedings and to participate as corporate entities in such proceedings.

**Human Remains or Remains:** means the body of a deceased person, regardless of its stage of decomposition, and cremated remains.

**Immediate Family Member:** means husband, wife, father, stepfather, mother, stepmother, brother, stepbrother; sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption.

**IBC:** International Building Code.

**IRC:** International Residential Code.

**Inspector:** the Luna County Building Inspector or the Code Enforcement Officer or a person duly delegated by the Luna County Building Inspector or the Code Enforcement Officer, or a person instructed or requested by the Luna County Building Inspector or the Code Enforcement Officer to provide a written report with respect to any matter set out in this Ordinance.

**Interment:** means the disposition of human remains by entombment, inurnment or burial.

**Junked Mobile Home:** any abandoned, disassembled, dismantled, uninhabitable, severely damaged or wrecked mobile home.

**Junked Vehicle:** any abandoned, disassembled, dismantled, inoperable or wrecked vehicle.

**Jurisdiction:** any political subdivision that adopts the IBC and NMBC for administrative regulations within its sphere of authority.

**Litter, to litter or littering:** all have the same meaning, namely, the act of placing, discarding, broadcasting, throwing, tossing, or allowing the spreading or broadcasting of refuse or debris onto any property or location or site not officially designated as a solid waste or refuse disposal facility, and shall include all such acts by a person occupying a motor vehicle.

**LCBO:** Luna County Building Official; see also Inspector and Building Official.

**Lodging House:** A building where lodging only is provided for compensation to three (3) or more, but not exceeding twenty (20), persons, in contradistinction to hotels open to transients.

**Lot:** A parcel of land occupied or intended for occupancy by one main building together with its accessory buildings and uses customarily incidental to it.

**Lot of Record:** A lot which is part of a subdivision, the map or plat of which has been recorded in the office of the County Clerk of Luna County, or a lot described by metes and bounds or by survey plat prepared by a land surveyor licensed in the state of New Mexico, which has been recorded in the office of the County Clerk of Luna County.

**Maintained:** to carry out any repairs, reconstruction, refinishing, or replacement of any part or parts of a building or structure or property, and maintained shall also mean the grooming of yards.

**Maintenance Contract** means a contract between the system owner and a maintenance service provider in which the maintenance service provider agrees to provide periodic inspections in regard to the operation, maintenance and repair of the system.

**Maintenance Service Provider** means a public entity, company or individual in the business of maintaining liquid waste systems according to manufacturers' specification.

**Manufactured Home:** a movable or portable housing structure over 32 feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. "Manufactured Home" does not include recreational vehicles or modular or pre-manufactured homes built to IBC standards, designed to be permanently affixed to real property. "Manufactured Home" includes any movable or portable housing structure over twelve feet in width and forty feet in length, which is used for non-residential purposes.

**Manufactured Home, Single-Wide:** a manufactured home, as defined in this ordinance consisting of a complete dwelling unit in one, and only one, transportable section.

**Mobile Home Park:** means a parcel of land used for the continuous accommodation of twelve or more occupied mobile homes and operated for the pecuniary benefit of the owner of the land, his agents or lessees. It does not include manufactured home subdivisions or property zoned for such subdivisions.

**Multi-Section Manufactured Home:** a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet, constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations. The multi-section manufactured home is comprised of two or more transportable sections assembled together at the time of installation on a site to form a single dwelling unit.

**MHITP – Manufactured Home Installation and Transport Permit:** a permit which indicates to the dealer, installer, and consumer that the LCBO, the Code Enforcement Officer, or the County Planner, has determined that the proposed site is suitable for installation of the manufactured home. Notwithstanding the generality of the foregoing, 'suitable' means that the requirements of Article 4, either have been met, or can be met.

**Mobile Home:** a moveable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code.

**Mobile Home and Manufactured Home Inspector:** the officer or other designated official charged with the administration and enforcement of applicable codes, or the official's duly authorized representative. For purposes of this ordinance, the officer shall be the LCBO. In addition to the LCBO, for purposes of inspections and enforcement of regulations in this Ordinance pertaining only to manufactured and mobile homes, the Luna County Code Enforcement Officer also shall be an inspector.

**Modular Home:** a standardized factory fabricated transportable building module not having a chassis or wheels of its own, designed and constructed in accordance with the International Building Code and intended to be placed on a permanent foundation and requires a building permit for installation.

**Multiple Use Building:** a building containing both a dwelling unit or units and non-residential use or uses.

**Net Acre:** The area of a lot, parcel or site, excluding public roads, public parks, school sites, and similar public lands, and any privately owned recreational spaces held in common for the general benefit and use of the residents of a subdivision or community.

**NFPA:** National Fire Protection Association.

**NMBC:** New Mexico Building Code.

**Non-conforming Use:** a use which does not conform to current or previous regulations.

**Non-conforming Lots:** lots less than one (1) acre in size which will become non-conforming in the context of this ordinance.

**Non-conforming Use, Legal:** a use which does not conform to current regulation, but existed legally and in compliance with regulations in effect at the time of establishment of such use which the owner is able to document.

**Non-Residential Property:** a building or structure or parts thereof not occupied in whole or in part for the purposes of human habitation including the land and premises appurtenant thereto.

**Notice of Nuisance:** the notice of nuisance issued by any authorized County Employee directed to the owner, occupant or tenant of property in Luna County setting out the violations and the time limits for abatement of the violations under this Ordinance.

**Nuisance:** a nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: A. injurious to public health, safety or morals, or B. interferes with the exercise and enjoyment of public rights, including the right to use public property.

**Occupancy:** the purpose that a building, or part thereof, is used or intended to be used.

**Officer:** the Code Enforcement Officer of Luna County, the person designated by Luna County to administer and enforce various codes and ordinances.

**Owner:** any person, agent, firm or corporation having a legal or equitable interest in the property.

**Parcel:** A unit of land capable of being described by location and boundaries and not dedicated for public or common use.

**Park Trailer:** a recreational vehicle that is primarily designed to provide temporary living quarters for recreation, camping or seasonal use. Built on a single chassis mounted on wheels which has a gross trailer area not exceeding 400 square feet in the set-up mode and is certified by the manufacturer as complying with ANSI A. 119.5.

**Permanent Foundation:** is defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood, or other materials approved under the International Building Code), and are required to be constructed on-site and shall have attachments points to anchor and stabilize the manufactured home. The design of the foundation shall be DAPIA approved (Design Approval Primary Inspection Agencies as the term utilized in the H.U.D. regulation which is included in the Federal Preemption, on manufactured homes, and inclusive of on-site installations) or designed by a licensed professional engineer in accordance with the manufacturer's specifications.

**Permit:** an official document or certificate issued by the building official, the County Planner, or other authorized authority, as appropriate, authorizing performance of a specified activity.

**Person:** means a natural person including any individual, partnership, company, corporation, firm, association, trust, estate, foundation, state and federal agency, institution, county, city, town, village, or municipality or other legal entity, however organized.

**Pole Trailer:** means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes and structural members capable, generally, of sustaining themselves as beams between the supporting connections.

**Processed Tire:** a tire that has been processed through grinding, shredding, or other means, thereby producing a material that is readily suitable for marketing into product manufacturing, energy recovery, or other beneficial reuse markets. Waste tires that have been compacted, baled, cut, or shredded without a suitable market shall not be considered processed tires and shall be regulated as solid waste.

**Property:** any area, plot, or parcel of land in Luna County, which is under a common ownership or is separately identified for assessment by the Luna County Assessor's Office. Property shall include land under the ownership of the United States, the State of New Mexico, or any local government or school district entity. This definition is intended to be inclusive and not limiting, and shall therefore include all land within the boundaries of Luna County, New Mexico, except that the definition of property, and therefore this Ordinance, shall exclude property within the boundaries of the City of Deming and the Village of Columbus, and any hereafter incorporated municipality.

**Property Occupant:** any person who is occupying any property, whether by legal right or without legal right.

**Property Owner:** the person who is the recorded owner of any property according to the records contained in the Luna County Clerk's Office.

**Railway Car:** means any passenger, sleeping, parlor, refrigerator, tank, observation, dining, and freight or coal car.

**Recreational Vehicle:** a self contained driven or towed portable unit not designed to be installed on a temporary or permanent foundation nor used for human occupancy as a residence which includes: pickup campers, chassis mounted motor homes, mini motor homes, park trailers, recreational vans, pop-up tent/hard-top trailers converted busses, or other converted and chopped vehicles.

**Refuse:** any organic or inorganic waste or debris, including, but not limited to, garbage, household waste, wastepaper, waste containers, empty packaging, empty or used plastic bags or other plastic containers, empty drink containers, empty or used styrofoam containers, empty metal cans or containers of any kind, any material that is discarded after residential or commercial use, scraps of building materials such as wood,

brick, concrete, asphalt, metal, and plastic, materials resulting from the demolition of any structure or vehicle, used grease, used oil, used vehicle parts, used appliances or machinery parts, used tires, discarded household furnishings, discarded cleaning materials, and any material commonly known as trash or junk.

Refuse does not include:

- a) waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate-rock and overburden from the mining of uranium ore, coal, copper, molybdenum, and other ores and minerals;
- b) agricultural waste, including, but not limited to, manure and other crop residues returned to the soil as fertilizer or soil conditioner;
- c) sand and gravel;
- d) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342 or source, special nuclear or by-produce material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq. and subsequent amendments;
- e) any material regulated by Subtitle C of the federal Resource Conservation and Recovery Act, or substances regulated by the federal Toxic Substance Control Act; and,
- f) salvage materials as defined in this Ordinance which are contained within an official, legally established Salvage Yard.

**Refuse Container:** any enclosed and securely covered container designed and functioning to store, contain, or hold refuse temporarily pending its transportation and disposal at an officially designated solid waste or refuse disposal facility. Refuse containers must be securely covered.

**Repair:** the reconstruction, renewal, refinishing or refurbishing of all or any part of an existing building or structure, or property for the purpose of its maintenance.

**Residential Property:** any property or building that is used, designed, or intended for use as a dwelling unit, dwelling, or apartment dwelling and includes the yards, accessory buildings and vacant property belonging to such property.

**Road Tractor:** means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any significant load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

**Salvage Materials:** any inoperable motor vehicles, inoperable construction equipment, inoperable agricultural equipment, inoperable machinery, inoperable major household appliances, and accumulations of scrap metal or used building materials, which are kept together in one location or on any property for the commercial purpose of selling or bartering same, repairing same, or recycling parts from same into other like objects. Such salvage materials are permitted only in an official, legally established salvage yard.

**Salvage Yard:** any property upon which salvage materials may be legally stored in the quantities described below:

- a) four or more inoperable vehicles;
- b) four or more inoperable major household appliances;
- c) four or more inoperable pieces of construction equipment;
- d) four or more inoperable pieces of agricultural equipment, brought in from another property; or,
- e) scrap metal, used building materials, and used household furnishings or goods, or other used materials.

**Semitrailer:** means a vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some significant part of its weight and that of its load rests upon or is carried by another vehicle.

**Sewage:** residential wastes, commercial wastes, industrial wastes, and any drainage, but does not include storm water.

**Sewerage System:** a system for transporting sewage owned and operated by Luna County, or a private disposal system approved by the state of New Mexico Environmental Department.

**Shall:** shall be construed as mandatory.

**Site:** a parcel of land or several contiguous parcels of land used or occupied, or to be used or occupied, by a building and accessory buildings and the area belonging to such buildings, bounded by a property line or a designated portion of a public street.

**Site Built Residences:** residences constructed at the permanent building site but which may incorporate the use of some prefabricated building components.

**Site of End Use:** a site where processed waste tires are recycled or reused in a beneficial manner authorized by Luna County.

**Smoke Detector:** an approved device that senses visible or invisible particles of combustion.

**Solid Waste:** means and includes, but is not limited to any garbage, rubbish, refuse, rejected or waste food, offal, swill, carrion, ashes dirt, slop, wastewater, trash, weeds, briars, brush, junk automobiles or automobile parts, waste or unwholesome material of any kind, except sewage, and including residential, commercial, institutional, industrial and recreational waste.

**Special Flood Hazard Area:** land in the flood plain subject to a one percent or greater chance of flooding in any given year.

**Standards:** the provisions and measures of physical conditions and occupancy set out in this Ordinance.

**Street:** all property dedicated or intended for public or private access to property, or subject to public easements therefore.

**Structure:** that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Without limiting the generality of the foregoing, structure shall include a wall, fence, sign or billboard.

**System:** several items of equipment assembled, grouped, or otherwise interconnected for the accomplishment of a purpose or function.

**Temporary:** applies to facilities or structures that are not of permanent construction, and are not intended to be permanently erected and maintained on a site. Tents and air supported structures are considered temporary for purposes of this Ordinance.

**Terrain Management:** means the control of floods, drainage, and erosion and measures required for adapting proposed development to existing soil characteristics and topography.

**Towing Service:** means the use of specialized equipment, including repossession services using towing equipment, to transport:

- a) a damaged, disabled or abandoned motor vehicle and its cargo;
- b) a motor vehicle to replace a damaged, disabled or abandoned motor vehicle;
- c) parts and equipment to repair a damaged, disabled or abandoned motor vehicle;
- d) a motor vehicle whose driver has been declared unable to drive by a law enforcement officer,
- e) a motor vehicle whose driver has been removed from the scene or is unable to drive; or,
- f) a motor vehicle repossessed or seized pursuant to lawful authority.

**Trailer:** means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle.

**UMC:** Uniform Mechanical Code.

**Untitled Mobile Home Units:** a used, pre-owned, or resold unit having no title, which has lost its identity as a titled mobile home/manufactured home through damage, whether severe or slight, caused by fire or other causes, sold “AS IS” and cannot be registered with the New Mexico Motor Vehicle Department.

**UPC:** Uniform Plumbing Code.

**Use:** the use for which land or buildings are occupied or maintained, arranged, designed, or intended.

**Used Tire:** a tire that previously has been on a vehicle but that retains suitable tread depth and is free of damage or defects so that it may be safely returned to its original purpose.

**Utility Service:** connection to an electrical service pole or other approved receptacle, or gas and water meter installation, but does not include electrical mainline extension or gas and water mainline extension or water main tap or meter box and setter installation.

**Variance:** Any deviation from the Regulations of this Ordinance as approved by the Board of County Commissioners, where such variance will not be contrary to the public interest; however, the allowable use of the premises is not subject to change by variance.

**Waste Tire or Scrap Tire:** a tire that is no longer suitable for its originally intended purpose because of wear, damage or defect. This definition shall include a tire mounted on a rim but not on a vehicle.

**Wastewater:** means the liquid-or water-carried wastes removed from residential properties, businesses, institutions and other uses, including bath and toilet wastes, laundry waste, and kitchen waste but not including toxic, hazardous, or industrial waste.

**Words not Defined:** Any word or term not defined in this Ordinance shall have the meaning ascribed to it in the Luna County Subdivision ordinance or the Luna County Zoning ordinance or the Deming/Luna County Extra-Territorial Zoning regulations, or they shall have their ordinary accepted meaning within the context with which they are used.

**Yard:** an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a building or structure from the ground upward, except permitted projections such as balconies, porches, or stairs.

## **ARTICLE 3 BUILDING STANDARDS-GENERAL**

### 3.1 ADOPTION OF INTERNATIONAL BUILDING CODE AND OTHER CODES

Each and all of the regulations, provisions, penalties, conditions, terms and all appendices of the latest:

- 3.1.1 International Building Code - 2003
- 3.1.2 International Residential Code - 2003
- 3.1.3 New Mexico Commercial Building Code
- 3.1.4 New Mexico Residential Code
- 3.1.5 National Electric Code - 2005
- 3.1.6 New Mexico Earthen Building Materials Construction Code (Phase III)
- 3.1.7 New Mexico Non-Load Bearing Straw Construction Building Code (Phase III)
- 3.1.8 New Mexico Plumbing Code
- 3.1.9 Uniform Plumbing and Mechanical Code - 2003
- 3.1.10 New Mexico Mechanical Code
- 3.1.11 New Mexico Electrical Code

- 3.1.12 New Mexico Electrical Safety Code (Phase III)
- 3.1.13 Manufactured Housing Division Rule and Regulations
- 3.1.14 National Fire Protection Association, Fire Prevention Code

are hereby referred to, adopted and incorporated as fully as if set out verbatim herein, and any amendments thereto, including any and all editions thereof.

### 3.2 ENFORCEMENT

Article 3 of this Ordinance and all codes, rules, regulations and other provisions set out in said Article 3 shall be enforced by the Luna County Building Official (LCBO), who is certified by the State of New Mexico Construction Industries Division, and has such powers and duties as are enumerated in and set forth in the current provisions of the Codes adopted in Article 3.1 of this Ordinance. Article 3 of this Ordinance may be enforced by an inspector employed by the State of New Mexico Construction Industries Division. The LCBO shall not enforce any code provisions pertaining to gas service installations or related matters.

### 3.3 COPIES OF CODES AVAILABLE FOR INSPECTION

One or more copies of applicable codes adopted in Article 3.1 of this Ordinance shall be available and subject to inspection at all reasonable times in the Office of the LCBO.

### 3.4 FEE SCHEDULE

The Fee Schedule for Building Permits shall be established by the Luna County Board of County Commissioners. No permit shall be issued nor shall an application be considered complete prior to the receipt of said fee.

### 3.5 BUILDING PERMITS REQUIRED

Any construction, residential or commercial or other use, any additions, expansions, repairs, remodel, or renovation to any building or structure, to include site built and modular buildings or structures, and any fence six (6) feet or greater in height, shall have a building permit issued by the LCBO or a New Mexico State Building Official, follow procedures required by codes adopted in this ordinance. In the case of manufactured or mobile housing units, such units shall have a manufactured home installation and transport permit issued by the LCBO or the Luna County Code Enforcement Officer. If the LCBO, or State Building Official or the Luna County Code Enforcement Officer determines that the property for which a permit has been requested is in violation, has outstanding violations, or may be in non-compliance with any part of this ordinance, or the Luna County Subdivision Ordinance, or any applicable state or federal regulation, the LCBO, State Building Official or the Luna County Code Enforcement Officer may deny issuance of the permit until such time as the property has been deemed compliant.

### 3.6 ALTERNATE MATERIALS, ALTERNATE DESIGN AND METHODS OF CONSTRUCTION

Pursuant to the International Building Code, and the International Residential Code, as amended from time to time, where materials, design and construction methods are specified in any of the Codes or Rules and Regulations adopted in Article 3.1 of this ordinance, alternate materials, design and methods of construction may be allowed provided any alternate has been approved, and is authorized by the Luna County Building Official (LCBO), or other authorized official.

The LCBO, or other authorized official, may approve any such alternate provided the LCBO, or other authorized official, is satisfied the proposed design is satisfactory and complies with the provisions of those codes and rules and regulations set out in Article 3.1 of this ordinance, and that the material and method of work proposed is at least the equivalent of that prescribed in any of the codes and rules and regulations set out in Section 3.1 of this ordinance.

The LCBO, or other authorized official, shall require that sufficient evidence or proof to substantiate any claims made about alternate material, design or methods of construction. Without limiting the generality of the foregoing sentence, the LCBO may require a study and/or certificate of code compliance from a qualified engineer or architect as evidence or proof of claims made about alternate material, design, or methods of construction.

Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any material or construction does not conform to the requirements of this code, the LCBO, or other authorized official, may require tests by an approved agency as proof of compliance to be made at no expense to Luna County.

The details of any action by the LCBO, or other authorized official, granting approval of an alternate shall be recorded and retained in the files of the Luna County Building Official's Office or the County Planner's office.

### 3.7 ON SITE UTILITY AND DEVELOPMENT REQUIREMENTS

All housing units, to include site built, modular, manufactured home or mobile homes whether titled or untitled are subject to this Ordinance and shall, prior to occupancy, be inspected by the LCBO, or other authorized official, and issued a Certificate of Occupancy or a Certificate of Compliance. Approved on site utilities, to include water, sewer, and electricity are prerequisite to issuance of a Manufactured Home Installation and Transport Permit (MHITP) or issuance of a building permit. All housing units shall be connected to a liquid waste disposal system permitted and approved by the New Mexico Environment Department, a domestic water well permitted by the New Mexico State Engineer, or be connected to an approved potable water utility whether private or municipal. For purposes of this section:

- 3.7.1 There shall be no multiple users connected to a domestic water well nor to any on site liquid waste disposal system except for those established and in place prior to adoption of this ordinance as amended or as otherwise provided herein.
- 3.7.2 Approval of connections will only be made after inspection and approval by the New Mexico State Plumbing Inspector for compliance with the UPC.
- 3.7.3 All electrical, plumbing, and gas hookups shall be inspected and approved by an inspector of the Manufactured Housing Division or CID, as the case may be prior to occupancy and before a Certificate of Occupancy or Certificate of Compliance will be issued by the LCBO, or other authorized official.
- 3.7.4 Any water/well, sewer/septic, electric, or natural gas/LP utility provider that connects service to individual parcels before the land owner holds a valid building permit or MHIP is in violation of this ordinance and the service shall be disconnected.
- 3.7.5 Any liquid waste disposal system must be approved by the New Mexico Environment Department.
- 3.7.6 No building permit or Manufactured Home Installation and Transport Permit (MHITP) or other permit shall be issued unless the County Planner, or other authorized official, has issued a 911 emergency address, and no 911 address shall be issued unless and until the County Planner, or other authorized official, is satisfied that a structure will be constructed. No 911 address shall be issued for any undeveloped or vacant lot or parcel of land.
- 3.7.7 No building permit or Manufactured Home Installation and Transport Permit (MHITP) or other permit shall be issued until and unless the applicant for such permit can show that he/she/it/they have legal access to a lot or parcel of land either by means of a public road or by means of a properly recorded easement, and such access shall provide reasonable physical ingress and egress to and from the parcel of land in the sole discretion of the LCBO, the County Planner, or a Luna County Code Enforcement Officer.

### 3.8 SMOKE DETECTORS

Smoke detectors shall be required in all dwelling units to include: site built, modular, manufactured homes, and mobile homes occupied or installed after December 9, 1999.

### 3.9 FLOOD HAZARD INSTALLATION REQUIREMENTS

No residential, commercial or other use or development shall be located or installed in a flood-prone area, such as a Flood Hazard Area as designated by the National Flood Insurance Rate Map for Luna County, or in, on, or over the path of an arroyo, or floodway without the prior approval of the County Floodplain Manager and the issuance of a floodplain development permit. All development and all construction related to such development shall comply with the minimum standards as adopted by, or may be amended by, the Federal Emergency Management Agency (FEMA). A new or replacement water supply system or sanitary sewage system may be required within a designated flood hazard area which shall be designed to minimize or eliminate infiltration of flood waters into the system as well as discharges from the system into flood waters, and the on-site waste disposal system must be located so as to avoid impairment of them or contamination from them during flooding.

### 3.10 FLOOD HAZARD INSTALLATION BASE FLOOD ELEVATION

All new construction and substantial improvements of structures designed for human occupancy to include Manufactured Homes being installed in a special flood hazard area shall be anchored to a permanent foundation system and installed such that all electrical, heating, ventilation, plumbing and other service facilities are located so as to prevent water from entering or accumulating within the components during conditions of flooding and must meet one of the following conditions:

- 3.10.1 The lowest floor level elevated at least one (1) foot above the base flood elevation where base flood elevations are determined.
- 3.10.2 The lowest floor level, with respect to site built structures, elevated two (2) feet above the highest adjacent grade in areas where no base flood elevations are determined.
- 3.10.3 The Manufactured Home chassis shall be supported by reinforced piers or other foundation elements of at least (36) thirty-six inches in height above grade and be securely anchored to a permanent foundation system to resist floatation, collapse and lateral movement in areas where no base flood elevations are determined.

### 3.11 FLOOD HAZARD MINIMUM FILL REQUIREMENT

Any building or structure to be constructed in "A" Zones, as designated by the National Flood Insurance Rate Map for Luna County, where no base flood elevations are determined, must have its lowest floor level constructed a minimum of two (2) feet above the highest adjacent grade. The material used to raise the lowest floor above the highest adjacent grade must be compacted to the satisfaction of the LCBO, the County Planner, or other authorized official, who may require that the landowner provide a report from a qualified geo-technical consultant that the soil is sufficiently compacted to accommodate the intended development. This section shall apply only to dwellings or structures erected or installed after the date of this ordinance as amended.

### 3.12 CERTIFICATE OF OCCUPANCY

Upon completion and verification of all inspections and requirements of this ordinance and any other applicable ordinance for site built or modular buildings or structures, prior to occupancy, a Certificate of

Occupancy shall be signed by the LCBO or the New Mexico State Building Official and a copy shall be provided to the owner/occupant.

**ARTICLE 4 MANUFACTURED HOME (SINGLE-WIDE AND MULTI-SECTION) AND EXISTING MOBILE HOME STANDARDS**

**4.1 ENFORCEMENT**

Enforcement of all provisions and standards enumerated in Article 4 of this Ordinance shall be enforced by the Luna County Code Enforcement Officer or designee of the Luna County Commission; however, Luna County officials or designees shall not enforce any standards or requirements adopted by the State of New Mexico.

**4.2 FEE SCHEDULE**

The Fee Schedule for Manufactured Home Installation Permits shall be established by the Luna County Board of County Commissioners. No permit shall be issued nor shall an application be considered complete prior to the receipt of said fee.

**4.3 AGE AND LOCATION OF MANUFACTURED HOMES**

New and used or refurbished manufactured homes manufactured after June 15, 1976, may be installed anywhere in the County after the effective date of this Ordinance. No manufactured home or mobile home manufactured prior to June 15, 1976, the effective date of the National Manufactured Housing Construction Standards Act of 1974, 42 U.S.C. 5401, et seq. (“The Act”) shall be transported into, or installed upon any site in Luna County. This Article 4.3 is subject to any applicable private, restrictive covenants pertaining to subdivision lots or real property. For purposes of this Article 4.3, it is the sole responsibility of those persons proposing to locate manufactured homes outside of existing mobile home parks or any manufactured home park to ensure that manufactured homes are allowed in the subdivision or area where they intend to locate their manufactured home. Luna County does not enforce restrictive covenants. Existing mobile home parks are defined as those parks in existence on the effective date of this Ordinance.

**4.4 MANUFACTURED HOME INSTALLATION AND TRANSPORT PERMIT**

Manufactured Home Installation and Transport Permit (MHITP) requirements are hereby established which adopt and incorporate the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974 and the New Mexico Manufactured Housing Division Rules and Regulations.

**4.5 MANUFACTURED HOME INSTALLATION AND TRANSPORT PERMIT REQUIRED**

After the effective date of this ordinance, the owner of any manufactured home, titled or untitled, with the sole intention of installing said manufactured home to be used for residential purposes, shall obtain a Manufactured Home Installation and Transport Permit (MHITP) from the LCBO, the Luna County Code Enforcement Officer, or the County Planner, or designee of the Luna County Commission, prior to installation of the home. This section shall also apply to such units which are specifically manufactured for commercial purposes, are manufactured to meet National Manufactured Housing Construction and Safety Standards, but do not meet the requirements of the International Building Code.

**4.6 MANUFACTURED HOME TRANSPORTING OR MOVING**

It shall be unlawful for any person or moving company to transport a manufactured home, from any location within Luna County, or from any location outside Luna County, to any site in Luna County, without first receiving from the owner of the manufactured home a copy of an approved Manufactured Home Installation and Transport Permit (MHITP) issued by the LCBO, the Code Enforcement Officer, County Planner or designee of the Luna County Commission. Any home to be transported into the County shall comply with the

provisions of Article 4.10 of this Ordinance. This Article 4.6 does not prevent the moving of a manufactured home from a site within Luna County to a site outside of Luna County.

#### 4.7 MANUFACTURED HOME TO BE ON PERMANENT FOUNDATION

All manufactured homes installed after the effective date of this ordinance shall be placed on a permanent foundation. Permanent foundations for manufactured homes shall comply with the New Mexico Manufactured Housing Division Rules and Regulations (NMAC 14.12.2.57), and may be subject to assessment as a real property improvement for ad valorem tax purposes, as allowed by the Property Tax Code.

#### 4.8 MANUFACTURED HOME/MOBILE HOME CERTIFICATION REQUIREMENT

No person shall transport or move into, or install upon any site in Luna County any manufactured home or mobile home that does not have affixed to it a Housing and Urban Development Label of Certification, or other sufficient proof of the date of manufacture.

#### 4.9 MANUFACTURED HOME/MOBILE HOME SALVAGE PURPOSE

4.9.1 No manufactured home/mobile home shall be transported or moved into, or installed on any site in Luna County for the purpose of salvaging parts or components of such homes for private or personal use or for sale to others, except that such homes may be transported to a licensed salvage yard.

4.9.1.1 Any licensed salvage yard used for manufactured/mobile home salvage or refurbishing purposes existing on the effective date of this ordinance must be screened from any public right-of-way or any residential property within one thousand (1,000) yards of the salvage yard. Screening shall be completed within 365 days of the effective date of this ordinance and shall conform to the requirements of Article 12.1.3 hereof. Any facility as described in this article and established after the effective date of this ordinance must be screened at the time of its establishment.

4.9.2 Any operation involving the salvage or refurbishment or the storage of salvaged or refurbished manufactured or mobile homes located on any site in Luna County on the effective date of this Ordinance where such site is not a legal, licensed salvage yard shall cease all operations within a period of three hundred and sixty five (365) days of the effective date of this Ordinance. The site shall be cleared of all salvage materials and any refurbished mobile and manufactured homes and said site shall be left in a clean and tidy condition all to the satisfaction of the Luna County Code Enforcement Officer. All salvage materials and any manufactured homes or mobile homes that have been refurbished or that are intended to be refurbished shall be relocated either to a licensed salvage yard or to a location outside of Luna County. Any operation moved to a licensed salvage yard shall comply with the provisions of this Article 4.9.1 and any other applicable provisions of this Ordinance. Failure to comply may result in the County invoking abatement measures as set out in Article 6.8.4 of this Ordinance. Any owner of such site that does not comply with this Section shall be subject to the penalties set out in Article 18 of this Ordinance.

#### 4.10 MANUFACTURED HOME/MOBILE HOME PRE-OWNED UNITS

Any manufactured home/mobile home offered for resale and which is intended to be installed in Luna County, must be habitable as defined in this regulation prior to occupancy and issuance of a Certificate of Compliance. Structural repairs, alterations and modifications to a manufactured home are regulated by the New Mexico Manufactured Housing Division. It shall be the responsibility of the seller or purchaser to obtain the required permits from said agency, upon inspection and approval by the State Manufactured Housing Inspector, and compliance with this ordinance, a certificate of compliance shall be issued prior to

occupancy. All units offered for resale for the purpose of installation in Luna County shall meet the required standards as set out in Article 6.5 of this Ordinance.

#### 4.11 MANUFACTURED HOME/MOBILE HOME STORAGE USE OR OTHER UNINTENDED USE

For the purpose of this ordinance, no manufactured home or mobile home shall be installed, parked or located on any site, lot, tract or parcel of land to be used for any purpose other than that for which the manufactured home or mobile home was designed or intended. No person shall use any manufactured home or mobile home for the sole purpose of the storage of any goods or materials, or for any purpose other than that for which the manufactured home or mobile home was designed or intended. This section shall not apply to any manufactured or mobile home used for another purpose at the effective date of the adoption of this ordinance, as amended.

#### 4.12 MANUFACTURED HOME/MOBILE HOME EXEMPTIONS

Manufactured homes/mobile homes which were legally established in manufactured/mobile home parks or other parcels of land prior to December 9, 1999, the original date of adoption of Ordinance No.37, are exempted from the requirements of this ordinance, except for provisions of Article 6, and with appropriate documentation shall be legal non-conforming uses until moved from that location.

#### 4.13 MANUFACTURED HOME/MOBILE HOME LEGAL NON-CONFORMING

A legal non-conforming manufactured home/mobile home is any manufactured home/mobile home which was legally installed prior to December 9, 1999, the date of adoption of Ordinance No.37. This does not, however, constitute an exemption from any laws or requirements which were in effect at the time of such installation. Any relocation of such a home will terminate the legal non-conforming status under this section and result in the application of this ordinance.

#### 4.14 MANUFACTURED HOME SITE REQUIREMENTS

The owners of property upon which a manufactured home is to be installed shall provide the LCBO, the Code Enforcement Officer or the County Planner, with a legal description, a plat or survey map clearly and accurately defining the location of the property, and a sketch plan of the proposed orientation and location of the manufactured home thereon, to include the location of the domestic well if not connected to a community water system, the septic tank and leach field, and the electric service pole. Approved on site utilities are prerequisite to issuance of a Manufactured Home Installation and Transport Permit (MHITP).

#### 4.15 MANUFACTURED HOME NUMBER PER SITE

Sites shall be limited to not more than one (1) manufactured home on any individual site, lot, tract or parcel of land as recorded in the office of the Luna County Clerk. In the case of site built residences, the temporary installation of a manufactured home may be permitted during construction, where a valid building permit has been issued. Within 30 days after the property owner receives a certificate of occupancy for the site built residence, the manufactured home must be removed from the premises. This section shall apply only to manufactured homes installed after the effective date of this ordinance, as amended.

#### 4.16 MANUFACTURED HOME SERVICES AND UTILITIES

Each and every manufactured home installed in Luna County after December 9, 1999, the date of adoption of Ordinance 37, shall have its own individual liquid waste system or be connected to a community liquid waste system approved by the New Mexico Environmental Department (NMED) and as required by this ordinance;

its own individual water well, or be connected to a community water system approved by the State Engineer; and have its own individual gas and electric services or any other utility.

#### 4.17 MANUFACTURED HOME/MOBILE HOME SKIRTING

4.17.1 New Installations. All manufactured homes installed under this Ordinance shall be skirted on all sides within thirty (30) days of the date of issue of the manufactured home installation permit by the Code Enforcement Officer, County Planner or designee of the Luna County Commission. Material used for skirting shall be new, in good condition and durable. Material such as new vinyl sheeting, new aluminum sheeting, painted galvanized steel sheeting, and similar material shall be used. Use of old metals whether sheet or plate strips, poor quality building materials, and materials such as wood boxes, crates or pallets, used tires and any similar material is prohibited.

4.17.2 Existing Manufactured Homes and Mobile Homes. All manufactured homes and all mobile homes in existence in Luna County on the effective date of this Ordinance shall be skirted within three hundred and sixty five (365) days of the effective date of this Ordinance. The accepted materials for skirting shall be as described in Article 4.17.1 of this Ordinance. Materials that are prohibited for use in skirting are as described in Article 4.17.1 of this Ordinance. The owner and/or the occupant of the manufactured home or mobile home shall be subject to the penalties set out in Article 18 of this Ordinance for non-compliance with the requirements of this Article.

#### 4.18 MANUFACTURED HOME/MOBILE HOME DEBRIS ON ROOF

Roofs shall be kept clear of tires, debris, concrete blocks, rocks, and other objects and structures not approved by the manufacturer or for which a permit has not been issued by the LCBO, the Code Enforcement Officer or the County Planner.

#### 4.19 MANUFACTURED HOME CERTIFICATE OF COMPLIANCE

Upon completion and verification of all inspections and requirements of this ordinance and any other applicable ordinance for manufactured homes, a Certificate of Compliance shall be signed by the LCBO, the Code Enforcement Officer or the County Planner, and a copy shall be provided to the owner/occupant.

#### 4.20 OCCUPANCY COMPLIANCE

All manufactured home units shall not be occupied until and unless the Manufactured Housing Installation and Transport Permit (MHITP) has been signed, noting any exceptions and/or conditions, specifying dates for compliance with any noted exceptions and the LCBO, the Code Enforcement Officer or the County Planner, has issued a Certificate of Compliance.

### **ARTICLE 5 RECREATIONAL VEHICLE STANDARDS**

#### 5.1. RECREATIONAL VEHICLES GENERAL

5.1.1 Any recreational vehicle (RV) trailers, camping trailers, fifth-wheel trailers and park trailers established with on-site utilities to include water well, sewer system and electricity prior to the effective date of this ordinance, as amended, shall be exempt from this ordinance, except for the provisions of Article 6; all other recreational vehicle usage shall be subject to the following:

- 5.1.2 Recreational Vehicle (RV) travel trailers, camping trailers, fifth-wheel trailers, park trailers and all other vehicles that are constructed to include a chassis, integral wheels and a towing hitch are primarily designed or constructed to provide temporary readily moveable living quarters for recreation, camping or travel uses. These and other structures of a temporary nature shall not be occupied as permanent residences. Fully self-contained recreational vehicles not located in an approved mobile home or recreational vehicle park shall require a permit to be issued by the LCBO, the Code Enforcement Officer or the County Planner. Fully self-contained recreational vehicles not located in an approved mobile home or recreational vehicle park may be permitted for not more than thirty (30) days, anywhere in Luna County within any calendar year, without approved utility connections. Recreational vehicles may be allowed for not more than one hundred and eighty (180) days, within any calendar year, on sites approved by the LCBO, the Code Enforcement Officer or the County Planner, which sites shall comply with the on-site utility and development requirements of Article 3.7 of this Ordinance. The foregoing time limits may be extended by the LCBO or code enforcement officer for family health reasons up to an additional 180 days.
- 5.1.3 No permit shall be issued for a period of thirty (30) days or less under Article 5.1.2 unless the LCBO, the Code Enforcement Officer or the County Planner is satisfied as to the method of disposal of liquid waste. The New Mexico Environment Department shall be consulted and its regulations shall be met. Such approved method shall be a condition to the issue of the permit.
- 5.1.4 Anyone who fails to obtain a permit as required under Article 5.1.2 shall, upon being notified in writing or by placard placed in a conspicuous place on the subject site by the LCBO, the Code Enforcement Officer or the County Planner, obtain such permit within fifteen (15) days of the date of the written notification. Failing this, the LCBO, the Code Enforcement Officer or the County Planner may grant an extension of time, not to exceed ten (10) calendar days. Where an extension of time is granted and the owner fails to obtain a permit, the owner of the recreational vehicle will be subject to all penalties set out in Article 18 of this Ordinance.
- 5.1.5 Recreational vehicles may be temporarily permitted on sites where a building permit has been issued for a site built dwelling, or modular home, or where a (MHITP) Manufactured Housing Installation and Transport Permit has been issued. A recreational vehicle shall not be occupied as a residence in Luna County for a period exceeding one hundred and eighty (180) days from the date of permit issuance. Recreational Vehicles intended for long term residence (longer than 180 days continuous residence) must be located in approved Mobile Home or Recreational Vehicle Parks.
- 5.1.6 Recreational vehicles placed on a Special Flood Hazard Area must be on site for fewer than 180 consecutive days per calendar year and be fully licensed and ready for highway use. "Ready for highway use" means that it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities with no permanently attached additions.

## **ARTICLE 6      PROPERTY STANDARDS**

### **6.1      GENERAL DUTY TO MAINTAIN AND REPAIR**

- 6.1.1 All owners of property and buildings in Luna County that do not conform to the standards set out in this Ordinance shall repair and maintain said property and buildings to conform with the standards of this Ordinance or to clear the property of all buildings, structures, refuse, or litter and leave it in a graded and leveled condition.

- 6.1.2 All repairs to comply with this Ordinance shall be carried out with suitable and sufficient materials in a manner good and workmanlike.
- 6.1.3 All property and buildings are to be maintained in a safe condition in accordance with the standards and requirements set out in this Ordinance.
- 6.1.4 Any building that is unused in whole or in part must be repaired to the standards of this Ordinance and to the safety standards of the Luna County Building Code Ordinance before the unused building or portion thereof is used or occupied.
- 6.1.5 Whenever a dimension, measure, or standard, either minimum or maximum, is specified in this Ordinance, the Officer may accept a dimension, measure, or standard that is more or less than the requirement, provided it will not reduce the level of performance required by this Ordinance.

## 6.2 PROHIBITED ACTS

- 6.2.1 No person shall litter in Luna County.
- 6.2.2 It shall be unlawful for any person to distribute, or scatter or dump refuse or any hazardous waste on any public or private property in the County. It shall be unlawful for any person to sweep, place, throw, deposit, or dump any refuse or hazardous material upon any public or private property in the County, except in appropriate or approved receptacles or containers.
- 6.2.3 No person shall transport any refuse in a vehicle or a trailer that is not securely fastened and covered so as to prevent the escape of refuse from the vehicle or trailer.
- 6.2.4 No person shall install or locate on any site, lot, tract or parcel of land a recreational vehicle, a freight trailer, a semitrailer, a pole trailer, a trailer or a railway car, either with its running gear in tact or with such running gear removed, for the purpose of the storage of goods or materials or as a residential property, or for any use not consistent with any of the provisions of this ordinance. However, this provision does not apply to prohibit the use of a trailer for office or storage or security use, or the use of a semi trailer or a pole trailer for storage, on a site where construction, under a valid building permit or a valid manufactured home installation and transportation permit, is actively taking place, with the added condition that such trailer, semitrailer or pole trailer shall be removed immediately upon completion of the construction activity or immediately upon the issue of an order by the Code Enforcement Officer to remove such structures.

## 6.3 PROPERTIES TO BE MAINTAINED IN NEAT AND TIDY CONDITION

- 6.3.1 Yards to be Maintained in a Neat and Tidy Condition. No person, property owner, or property occupant shall place, permit or allow the accumulation of refuse in any yard of any property within Luna County except within a refuse container or at an officially designated solid waste or refuse disposal facility. Properties shall be maintained in a neat and tidy condition in accordance with the standards and requirements of this Ordinance Without limiting the generality of the foregoing, maintained in a neat and tidy condition includes the removal of:
  - 6.3.1.1 refuse, litter, garbage, waste, brush, and debris;
  - 6.3.1.2 injurious insects, termites, rodents, and other pests;
  - 6.3.1.3 overgrowth of weeds, grass, or other ground cover;

- 6.3.1.4 hedges, vines, shrubs and bushes that are unreasonably overgrown;
  - 6.3.1.5 dead, decayed, or damaged trees or other growth and the branches and limbs thereof that create an unsafe condition;
  - 6.3.1.6 junked vehicles, inoperative, wrecked, dismantled, discarded, unused, unlicensed vehicles or trailers, or vehicles or trailers without a current license, or a junked mobile home, except in an authorized salvage yard;
  - 6.3.1.7 machinery or parts thereof, or other objects or parts thereof, or the accumulation of material that creates an unsafe, unsightly condition, or which is not in keeping with neighboring properties except for such items located in an authorized salvage yard;
  - 6.3.1.8 dilapidated or collapsed buildings or structures, and the filling or protecting of any uncovered cavities such as wells, trenches, cisterns, and septic tanks; and,
  - 6.3.1.9 any object or condition that may create a health, fire, or accident hazard.
- 6.3.2 Parking Areas, Driveways, Walkways, Ramps
- 6.3.2.1 Parking areas, driveways, ramps, lanes, walkways, outside stairs, decks and landings, except for those on property zoned and used primarily for agriculture, shall be kept free of junked vehicles, refuse and litter, and shall be kept in good repair at all times.
  - 6.3.2.2 Every pedestrian walkway shall be maintained so as to afford safe, unobstructed passage under normal use and weather conditions.
  - 6.3.2.3 Parking areas, driveways, ramps, lanes, and walkways shall be properly drained so as to prevent ponding of water.
- 6.3.3 Storm Water, Grading, Drainage and Dust Control
- 6.3.3.1 Storm water will be drained to prevent the entrance of water into any residential or non-residential building, and to prevent recurrent ponding, unless such ponding is in accordance with a storm water management plan approved by Luna County.
  - 6.3.3.2 Property will be properly graded or re-graded to prevent the ponding of water, unstable soil conditions and soil erosion. The Officer may require a grading and drainage plan to be prepared for any property. Such plan will include appropriate gradients and may include other drainage facilities such as swales, catch basins and dry wells and appropriate ground cover to slow and absorb the flow of water and to minimize erosion.
  - 6.3.3.3 No person shall clear any land of its natural vegetation without having in place and implementing a plan, approved by the Officer, to prevent soil, sand, dust, and building materials, construction waste or other materials from being blown by the wind from the said land. Soil and dust or other material, specified above, blown by the wind from land cleared of its natural vegetation is a public nuisance and a violation of this Ordinance. In the event the owner, lessee, occupant, or any agent or representative thereof having charge or control of such land fails or refuses to prevent such materials from being blown from the land by the wind, the County may take such corrective action as it deems advisable and the cost of doing so shall constitute a lien on the subject land.

#### 6.3.4 Pest Prevention

6.3.4.1 Properties and buildings, including accessory buildings, except agricultural outbuildings, shall be kept free of rodents, vermin, insects and other pests. Methods used for extermination of rodents, insects, and other pests shall be in accordance with any County, State of New Mexico or Federal law and regulations.

#### 6.3.5 Storage of Refuse, Outside

6.3.5.1 Where refuse is stored outside the enclosing walls of a building, the storage of refuse by an owner, occupant or tenant shall:

- a) be kept, at all times, in a litter free condition and in a manner that will not attract rodents, vermin, or other pests, or create a health or safety hazard because of the nature of the storage or through deterioration, wind, or misuse of the storage facility;
- b) except for single family and duplex residential buildings, be screened if less than 100 feet from a public highway, street, walkway, park or residential property so as not to be visible from such locations. The required screening shall:
  - i. extend from grade to a height of one (1) foot above the height of the storage container (s);
  - ii. consist of a continuous opaque visual barrier when viewed at 90 degrees to the surface; and,
  - iii. be maintained in a clean, sanitary, and odor controlled condition.

6.3.5.2 All refuse storage containers shall be maintained in a clean sanitary condition, and shall not obstruct an emergency route, driveway, walkway, recreation facility, or parking lot.

#### 6.3.6 Lighting

6.3.6.1 Lighting fixtures, lamps and their supports and connections shall be maintained in a safe and complete condition, without visible deterioration.

6.3.6.2 All properties that are being developed, remodeled, refurbished, or rehabilitated shall comply with the Night Sky Protection Act, NMSA 1978, Sections 74-12-1 through 74-12-11.

#### 6.3.7 Junked Vehicles

6.3.7.1 Except as provided in this Article, it shall be unlawful to park, store or abandon junked vehicles on private property, a public street, or county right-of-way. Such a violation shall be deemed a nuisance under this ordinance subject to enforcement and abatement. The following provisions apply to junked vehicles located on private property.

- a) a person may park or store no more than fifteen junked vehicles on private property so long as the property is screened as set forth below. Any person who parks or stores more than fifteen junked vehicles on private property which is not a legal salvage yard shall be subject to the enforcement provisions of this ordinance.

- b) any person parking or storing more than four junked vehicles but fewer than sixteen junked vehicles on private property as described in Article 6.3.7.1(a) above, must screen the property using solid or opaque fencing sufficient to fully obscure the view of all junked vehicles at a point not less than six (6) feet above ground. The view must be obscured from all public and private roads, highways, streets, parks or adjacent residential property so as not to be visible from such locations.
- c) Construction materials must be of good quality and condition and installation of all screens shall require an application by the owner approved by the Luna County Planning Department. Use of old metals, poor quality building materials, wood boxes, crates and pallets, and used tires is prohibited.

6.3.8 Junked Mobile Homes

- 6.3.8.1 It shall be unlawful to park, store or abandon junked, uninhabitable mobile homes on private property, a public street or County road right-of-way. Such a violation shall be deemed a nuisance subject to abatement.

6.4 BUILDINGS, STRUCTURAL

6.4.1 Structural Soundness

- 6.4.1.1 Every part of a building shall be kept in a structurally sound condition, and a building and every structural system or component serving a part thereof shall be capable of sustaining its own weight together with the loads that may be imposed by the use and occupancy therein and by natural causes such as wind and snow.

6.5 BUILDINGS, EXTERIOR SURFACES

- 6.5.1 All exterior surfaces on a building or structure shall be maintained in a workmanlike manner.
- 6.5.2 Appropriate measures shall be taken to remove any stains or other defacement occurring on the finished exterior surfaces and, where necessary, to restore the surface and adjacent areas to, as near as possible, their appearance before the staining occurred.
- 6.5.3 Exterior surfaces of materials used for the temporary barricading of openings to the interior of a building shall be surfaced with a finish compatible with the surrounding finishes.

6.6 ROOFS

- 6.6.1 All roofs shall be kept clear of debris such as tires, concrete blocks, rocks, and other objects, materials, and structures not approved by the builder, manufacturer or installer, or for which a permit has not been issued.

6.7 SEWAGE

- 6.7.1 Sewage from residential and non-residential buildings shall be discharged only into an approved sewerage system.

6.8 ADMINISTRATION AND ENFORCEMENT

6.8.1 Code Enforcement Officer

6.8.1.1 The Code Enforcement Officer of Luna County shall be responsible for the Administration and Enforcement of this Ordinance and any other Code or Ordinance directed by the appropriate Luna County authority.

6.8.2 Inspectors

6.8.2.1 Any Building Inspector of the Luna County Planning Office, and the Luna County Fire Marshall, and any Electrical Inspector of the State of New Mexico, and any Plumbing Inspector of the State of New Mexico, and any Environmentalist of the State of New Mexico Environment Department, and any Manufactured Housing Division Inspector of the State of New Mexico, and any Engineer or Technician or Technologist or Water Resource Specialist of the State Engineer's Office of the State of New Mexico, and any other qualified person, may be authorized by the Code Enforcement Officer to help enforce the standards set out in this Ordinance, or may be requested by the Code Enforcement Officer to give a written report, or other advice to aid in the administration and enforcement of this Ordinance.

6.8.3 Notice of Nuisance-Notice of Violation

6.8.3.1 Any condition or situation which violates any of the provisions of this Ordinance shall be deemed a Nuisance, both public and private in nature.

6.8.3.2 In addition to the criminal penalties provided for in this Ordinance, any such nuisance, after reasonable efforts to secure voluntary compliance with this Ordinance have failed, shall be subject to abatement as follows:

- a) Notice of Nuisance. (i) If, after inspection, as the result of a complaint by a member of the public, or the observation of any County or State employee, the Officer is satisfied a property, building or improvement thereon does not conform to any of the standards prescribed in this Ordinance, the Officer shall serve, or cause to be served by personal service, or send by prepaid registered mail to the owner of record of the property, or to the occupant or tenant of the property, or both, and to all persons shown by the records to have an interest in the property, a Notice of Nuisance or Violation setting out the particulars of the violation(s). The Notice shall establish a reasonable time limit for the abatement of the violation(s) by the owner, or occupant or tenant, or both, which limit shall be not less than ten (10) days nor more than ninety (90) days after service of the Notice. The Notice shall be served at the owner's or occupant's or tenant's last known address; (ii) In the event of a violation of this ordinance constitutes an immediate danger to the public health and safety, the notice provisions of this subsection shall not apply, and the violation may be prosecuted and abated immediately.
- b) Placard. If the Officer is unable to achieve service under Article 6.8.3.2 a) he/she may place a placard containing the terms of the Notice in a conspicuous place on the property or building, and the placing of the placard shall be deemed to be sufficient service of the Notice on the Owner or other persons.
- c) Extension of Time Frame for Abatement. Where the Officer is satisfied that there is good and sufficient reason to extend the time frame for abatement of the violation(s), he/she may extend the time frame set out in

Article 6.8.3.2 a) above for a period of time not to exceed forty-five (45) days beyond the time period set out in the original Notice.

- d) Failure to Abate. In the event the owner, occupant or tenant of the property where the nuisance violation exists, has failed to abate the nuisance violation(s) within the prescribed period of time, then the Officer shall issue a citation or file a complaint charging violation of this Ordinance with the Magistrate Court, or other appropriate court of jurisdiction, demanding that the owner of the property, or the occupant, or both, be held to answer to the Court for the violation.
- e) Removal of Nuisance. In the event that the person is convicted of violating this Ordinance and continues to refuse to abate the violations, the County or aggrieved property owner may enforce this Section in any manner consistent with law.
- f) Injunctions. The County or aggrieved property owner, when a nuisance exists as set forth herein, may institute civil proceedings in Magistrate Court or District Court to enjoin all persons from maintaining or permitting the nuisance and to abate the same and for civil damages as may be appropriate. Costs and attorneys fees shall be elements of damage in any proceeding.

#### 6.8.4 Removal of Dangerous Buildings or Debris

- a) In addition to the provisions of Article 6.8.3.2 above, whenever any building or structure is ruined, damaged and dilapidated, or any property is covered with ruins, rubbish, refuse, wreckage or debris, the Board of County Commissioners (the County Commission) may by resolution find that the ruined, damaged, dilapidated building, structure or property is a menace to the public health, safety, peace or comfort and require the removal of the building, structure, ruins, rubbish, refuse wreckage or debris. "Covered", for purposes of this Section, shall mean any part of the subject property.
- b) A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or property. If the owner, as shown by the real estate records of the County Clerk, occupant or agent in charge of the building, structure or property cannot be served within the county, a copy of the resolution shall be posted on the building, structure or property and a copy of the resolution shall be published one time.
- c) Within ten (10) days of the receipt of a copy of the resolution or of the posting and the publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or property shall commence removing the building, structure, ruin, rubbish, refuse, wreckage, or debris, or file a written objection with the County Manager asking for a hearing before the County Commission.
- d) If a written objection is filed as required by this section, the County Commission shall:
  - i. fix a date for a hearing on its resolution and the objection;
  - ii. consider all evidence for and against the removal resolution at the hearing; and
  - iii. determine if its resolution should be enforced or rescinded.

- e) Any person aggrieved by the determination of the County Commission may appeal to the district court by:
  - i. giving notice of appeal to the County Commission within five (5) days after the determination made by the County Commission; and,
  - ii. filing a petition in district court within twenty (20) days after the determination by the County Commission. The district court shall hear the matter de novo and enter judgment in accordance with its findings.
- f) If the owner, occupant or agent in charge of the building, structure or property fails to commence removing the building, structure, ruins, rubbish, refuse, wreckage or debris:
  - i. within ten (10) days of being served a copy of the resolution or of the posting and the publishing of the resolution; or,
  - ii. within five (5) days of the determination by the governing body that the resolution shall be enforced; or,
  - iii. after the district court enters a judgment sustaining the determination of the County Commission, the County may remove the building, structure, ruins, rubbish, refuse, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruins, rubbish, refuse, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-6, NMSA 1978.
- g) The County may pay for the costs of removal of any condemned building, structure, ruins, rubbish, refuse, wreckage or debris by granting to the person removing such materials, the legal right to all salvageable materials in lieu of all other compensation.
- h) Any person or firm removing any condemned building, structure, ruins, rubbish, refuse, wreckage or debris shall leave the property from which the material has been removed in a clean, level and safe condition for further occupancy or construction and with all excavations filled.

#### 6.8.5 Emergency Measures

- 6.8.5.1 For purposes of this section, “emergency” or “imminent danger” shall mean any condition which could cause serious or life-threatening injury or death at any time.
- 6.8.5.2 Imminent Danger. Where, in the opinion of the Building Official, or the Code Enforcement Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Building Official or the Code Enforcement Officer, with the approval of the County Planner, or the County Manager or the Director of Operations or the Chairperson of the County Commission, is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Land use Supervisor or the Building Official or the Code Enforcement Officer shall cause to

be posted at entrance to such structure a notice reading as follows: “This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Luna County Code Enforcement Officer (or the Building Official).” It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the structure. In determining the nature and extent of the imminent danger, the Building Official or the Code Enforcement Officer, with the approval of the County Planner or the County Manager or the Director of Operations or the Chairperson of the County Commission, may engage the services of a professional engineer licensed in the State of New Mexico, or other knowledgeable professional.

6.8.5.3 Temporary Safeguards. Whenever, in the opinion of the Code Enforcement Officer or the Building Official, there is imminent danger due to an unsafe condition, the Code Enforcement Officer, with the approval of the County Planner or the County Manager or the Director of Operations or the Chairperson of the County Commission may order the boarding up of openings, to render such structure temporarily safe or take such other action as the Code Enforcement Officer or the Building Official deems necessary to meet such emergency.

6.8.5.4 Closing Streets. When necessary for public safety, the Code Enforcement Officer or the Building Official with the approval of the County Planner or the County Manager or the Director of Operations or the Chairperson of the County Commission shall temporarily close structures and/or order the authority having jurisdiction to close, sidewalks, streets, roads, public ways and places adjacent to unsafe structures and prohibit the same from being utilized.

6.8.5.5 Emergency Repairs. For the purposes of administering and enforcing Article 6.8.5, of this Ordinance, the Code Enforcement Officer, with the approval of the County Planner or the County Manager or the Director of Operations or the Chairperson of the County Commission, may employ the necessary labor and materials to perform the required emergency work as expeditiously as possible.

6.8.5.6 Costs of Emergency Repairs. Costs incurred in the performance of emergency work shall be paid by the County. The County Attorney shall institute all appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

#### 6.8.6 Certificate of Compliance

6.8.6.1 Following the inspection of a property and/or building, the Officer may, or on request of the owner, or his/her authorized agent shall, issue a certificate of compliance, if, in his/her opinion, the property and/or building is in compliance with the standards of this Ordinance.

6.8.6.2 When pertaining to Article 6: Property Maintenance Standards of this Ordinance, a fee shall be paid to the County prior to the issuance of a Certificate of Compliance where it is issued at the request of the owner or his/her authorized agent in an amount prescribed by the County Board of Commissioners, which amount shall be not less than \$100.00.

#### 6.8.7 Prohibition

6.8.7.1 The Code Enforcement Officer may issue a Notice prohibiting the occupancy of any unsafe or uninhabitable building.

6.8.8 Citation Uniform Non-Traffic

6.8.8.1 The use of uniform non-traffic citation forms is authorized for use in enforcement of this Ordinance, except as otherwise provided.

6.8.9 Variance

6.8.9.1 It is the intention of the Board of County Commissioners that all variances be temporary in duration. The County Commission may grant a variance to the regulations set out in Article 3.7.1, Article 4.15, and Article 7.3 of this Ordinance for the sole purpose of permitting one accessory dwelling unit on any property in Luna County on the following grounds only:

a) To provide living accommodation to an immediate member of the family of the owner-occupant of the principal dwelling unit which family member requires immediate and urgent care because he/she is disabled, physically or mentally infirm, has a disease which is or will become debilitating, or is incapable of being gainfully employed because of their condition. A certificate or letter signed by a physician licensed in the State of New Mexico attesting to the medical condition and the need for care of the family member who will occupy the accessory dwelling unit shall be required by the County Commission as proof of the medical condition.

6.8.9.2 The County Commission shall not grant any variance which will cause the County to incur or absorb any costs. In granting any variance the County Commission may impose such conditions as will:

- a) Substantially secure the objectives of the standards set out in this Ordinance;
- b) Not adversely affect the health safety and general welfare of the general public and the immediate property owners;
- c) Impose whatever time limits may be reasonable and appropriate in the circumstances. Any variance granted shall be for a period of time not to exceed three (3) years from the date of granting such variance. If necessary, the variance may be renewed prior to the expiration of the term of the variance upon written application by the owner-occupant. Such renewal shall be for a period of time not to exceed three (3) years. All variances granted by the County Commission must be renewed prior to the expiration of either the initial time limit imposed by the County Commission or any renewal period granted by the County Commission. There shall be no limits on the number of renewals provided the reason for the initial variance remains valid;
- d) Impose conditions on the type, quality and design of any proposed construction;
- e) Impose height limits;
- f) Require buffering in the form of fencing and/or vegetation to protect and shield adjacent land uses;
- g) Ensure compatibility with other development in the adjacent area. Compatibility as used here shall include, but is not limited to the

following: land use, height, scale, density, water supply and liquid waste disposal facilities; and,

- h) Accomplish any other purpose and effect deemed advisable and appropriate by the County Commission.

6.8.9.3 Procedure. The following procedure shall apply to all requests for a variance:

- a) All requests for a variance shall be in writing and submitted to the Luna County Planner. The written request shall set out the following information:
  - i. a description of the specific variance requested;
  - ii. the reasons for the request;
  - iii. the supporting information, such as medical certificates, for such request;
  - iv. the period of time for which the variance is necessary (initial variance may be for a maximum three year period, subject to renewal);
  - v. a description of the action the owner-occupant will take to discontinue the use of, and remove, the additional accessory dwelling when the reason for the variance no longer exists.
- b) The County Planner shall review the written request for variance for completeness and shall, within ten (10) days of receipt of the request, inform the applicant either that the request is complete or the nature of any additional information that is required. Until the request is complete, no further action shall be taken by the County Planner or the County Commission.
- c) The County Planner shall confer with and seek the advice of the Code Enforcement Officer and the County Attorney, as appropriate, with respect to the request for variance. The County Commission shall hold a public hearing on all requests for a variance, or a renewal of a variance, under this section. The public hearing shall be held at a regularly scheduled County Commission meeting.
- d) The County Planner shall notify all property owners within five hundred (500) feet of the subject property by first class regular mail at least ten (10) days prior to the County Commission meeting at which the variance application will be heard. Such notice shall briefly describe the nature of the variance and the date, time and location of the hearing.
- e) The County Planner shall submit a written report together with his/her recommendation to the County Commission five (5) days prior to the hearing date.
- f) Variance requests under this Article shall be considered by the County Commission at a regularly scheduled Commission meeting. This shall be considered a quasi-judicial proceeding to be conducted in accordance with quasi-judicial procedures adopted by the County Commission.

- g) The written decision and order of the County Commission, together with any conditions, shall be prepared, signed and filed with the County Clerk within ten (10) working days after the date the County Commission made its decision. The County Planner shall keep a written record of the variance granted and shall show the location and nature of the variance on a county map specifically designated for that purpose.

## **ARTICLE 7 GENERAL PROVISIONS**

### **7.1 CONFORMANCE MANDATORY**

Except as otherwise provided by this ordinance, no building shall hereafter be used, erected, constructed, reconstructed, moved or altered, nor shall any land be used or developed, except in conformity with the regulations, herein set out in applicable parts of this Ordinance.

### **7.2 MINIMUM REQUIREMENTS**

The provisions of this ordinance are minimum requirements. Where these regulations impose a greater restriction than is imposed or required by other provisions of law, the provisions of this Ordinance shall control.

### **7.3 ONE MAIN BUILDING PER LOT**

Every building hereafter erected, enlarged or structurally altered shall be located on a "lot" as defined in Article 2, Definitions of this Ordinance, and in no case shall there be more than one main building on one lot. Land that is part of one lot and that is not in excess of the area requirements for that lot shall not be used to satisfy the area requirements of any other lot.

## **ARTICLE 8 MINIMUM SITE/LOT AREA**

### **8.1 MINIMUM SITE/LOT AREA AND CONDITIONS FOR A BUILDING PERMIT OR MANUFACTURED HOME INSTALLATION AND TRANSPORT PERMIT (MHITP) WHERE MINIMUM LOT SIZE REQUIREMENT IS NOT MET**

8.1.1 For purposes of new development (excluding any existing development), this Article shall apply to all lots legally created and recorded, either by registered plan or through the subdivision exemption procedure, or other legal process, prior to May 8, 1997, including plans of subdivision, applications for exemption, or other legal processes to create lots or sites, that were formally in the appropriate approval process, but not yet approved, on May 8, 1997. For such lots, no building permit or Manufactured Home Installation and Transport Permit (MHITP) shall be issued for the construction of any building or structure on any site or lot in Luna County that is less than one (1.0) net acre in area. For the purposes of this Section, "minimum site or lot area" shall be the sum of the site or lot sizes of all contiguous lots or sites necessary to meet the minimum one (1.0) net acre area requirement. For purposes of this section "contiguous" does not include sites or lots separated by a public road that exists on the effective date of this Ordinance.

8.1.1(a) The effective date of the minimum lot size provisions of Article 8 shall be deferred as follows: land owners affected by said Article 8 shall have seven hundred thirty (730) days from the effective date of this ordinance as amended to obtain a building permit or a manufactured home installation and transport permit, and actually commence construction or installation, as the case may be, of their dwelling unit. All such owners must install an advanced liquid waste system on the subject lot during this 730 day period. Upon the

expiration of the 730 day period set out herein, all provisions of this Article 8 will be in full force and effect and all land owners shall comply with said provisions.

- 8.1.1(b) After the effective date of this ordinance, land owners acting individually or jointly who develop a lot size of 2.0 acres or larger may install a conventional liquid waste system subject only to maximum discharge limits and the number of dwelling units connected to the system set by NMED. Such sites shall be subject to the provisions of this ordinance.
- 8.1.1(c) After the effective date of this ordinance, land owners acting individually or jointly who develop a lot size of less than 2.0 net acres shall install an advanced liquid waste system on such site.
- 8.1.1(d) With regard to all lots or sites regulated by Article 8.1.1 of this Ordinance, no individual water well or shared well, or community water system or any liquid waste disposal system whatsoever shall be installed on any such lot or site in Luna County without the owner of such lot or site first complying with all requirements of Article 8.1 of this Ordinance and obtaining a building permit from Luna County.
- 8.1.1(e) Prior to commencement of any construction of any site built dwelling or the installation of any manufactured home, the owner shall provide to the LCBO or designee the following:
  - 1. Copy of the liquid waste system permit issued by the NMED;
  - 2. Copy of the maintenance agreement applicable to advanced liquid waste system required under this ordinance.
  - 3. A site plan showing all planned dwellings, water wells and liquid waste systems and other improvements to be located on the subject lot.
- 8.1.1.2 Any lot or site already having a completed water well and liquid waste disposal system in place at the effective date this ordinance shall not be required to install an advanced liquid waste system. For purposes of this Article 8.1.1.2, completed shall mean full installation of the water well and liquid waste disposal systems so that such facilities need only be connected to a dwelling to be functional. With regard to demonstrating the date on which such water well and liquid waste disposal systems were completed, the burden of proof shall rest entirely with the property owner.
- 8.1.2 Any site or lot less than one (1.0) net acre in area, legally created and recorded, either by registered plan or through the subdivision exemption procedure, or other legal process, prior to May 8, 1997, may be issued a building permit or a MHITP upon all of the following conditions being met to the satisfaction of the County Planner:
  - a) The applicant for a building permit or a MHITP can show that he has acquired legal title to other contiguous lots or sites which when taken together with the applicant's original lot or site will total a minimum of one (1.0) net acre in area; or,
  - b) The applicant for a building permit or a MHITP produces an agreement, legally executed and recorded in the office of the County Clerk, among the applicant and the owners of contiguous sites or lots, the sum of which sites or lots, including that of the applicant, totals a minimum of one (1.0) net acre in area. This agreement shall be binding on all parties to the agreement and shall incorporate the following matters:
    - i. that the parties agree to treat and deal with all individual lots or sites as one site or lot for purposes of obtaining a building permit or a MHITP;

- ii. that no more than one main building, site built or manufactured home, and its accessory buildings, shall be constructed on each individual site or lot that that is part of the agreement;
- iii. that the parties agree to install and utilize only one common well to provide water to each and every individual lot which is part of the agreement. Alternatively, a community water system approved by the State Engineer's Office may be substituted for the common well;
- iv. that the parties agree to install and utilize only one advanced liquid waste system to provide for the collection, treatment and dispersal/discharge of wastewater. Alternatively, a community liquid waste system may be substituted for the advanced liquid waste system.
- v. that the parties agree to have a professional engineer licensed in the State of New Mexico prepare the plan and specifications for the common well and the advanced liquid waste system, or any community water system or community liquid waste system and supervise the installation of the common well and the advanced liquid waste system for wastewater, or any community system, and all necessary appurtenances to these systems;
- vi. provisions for the ownership and maintenance of the common well and advanced liquid waste system. The applicant to whom the well permit and the advanced liquid waste system permit are issued shall be responsible for the operation and maintenance of the common well and advanced liquid waste system. This person shall also be responsible for obtaining the necessary easements, rights-of-way or ownership necessary for access to and operation of the common well or the advanced liquid waste system;
- vii. a reliable plan for handling the apportionment and collection of costs among the parties to the agreement. Each party shall agree to pay its fair proportionate share of operating and maintenance costs, which shall be set out in this agreement;
- viii. the agreement of the parties that they will do nothing to damage either the common well or the advanced liquid waste system. Without limiting the generality of the foregoing, each party agrees that it shall prevent any materials or chemicals that would adversely affect the operation of the advanced liquid waste system from entering the wastewater system.

Any other lots to be developed by land owners jointly under the provisions of Article 8 shall also comply with the provisions of Article 8.1.2(b) except that for lot sizes in excess of 2.0 acres net, a conventional liquid waste system may be installed but shall be subject to the maintenance provisions of that Article.

Liquid waste systems installed under this article are also subject to NMED's "State Liquid Waste Regulations" and Water Quality Act where applicable.

#### 8.1.2.1 OPERATION AND MAINTENANCE REQUIRMENTS

- i. The owner of an advanced treatment system installed after the effective date of this regulation shall maintain such system in accordance with the manufacturer's standards.

- ii. For purposes of this Ordinance and its requirements for an advanced liquid waste system, Luna County, subject to any oversight and enforcement measures implemented by NMED, shall be responsible for the inspection and monitoring of advanced liquid waste systems after issuance of the permit therefor by NMED and installation by the owner when the density of discharge of such system is less than 500 gallons per acre per day. When such discharge exceeds 500 gallons per acre per day, NMED shall enforce applicable maintenance and monitoring requirements.

8.1.3 The provisions of Article 3.7.1 of this Ordinance shall not apply to the situation and circumstances described in Article 8, and shall not prevent the application of the provisions set out in Article 8.1.2 of this Ordinance.

8.1.4 Each party to the agreement set out in Article 8.1.2b may obtain a building permit or MHITP provided the party applying for such permit is in good standing with respect to the agreement set out in Article 8.1.2b, and provided the party applying for the permit abides by all applicable provisions of Article 8.1.2 of this ordinance.

8.1.5 Variance Process for Minimum Lot Size Regulations

8.1.5.1 It is the intention of the Board of County Commissioners to provide a variance process to deal with those situations where a true hardship would result from a strict compliance with the regulations set out in Article 8.1.2 of this Ordinance. Where the Board of County Commissioners finds that such a hardship exists, it may vary the regulations of said Article 8.1.2 so that substantial and reasonable justice may be done and the public interest secured and maintained. For the purposes of this section, the requirements for “hardship” are set out in Article 8.1.5.2 of this Ordinance.

8.1.5.2 Hardship

a) Hardship Defined. In determining if a hardship in fact exists with respect to an applicant’s ability to comply with the requirements of Article 8.1.2 of this Ordinance, the County Commission shall determine that the requested variance affirmatively meets all of the following standards:

- i. The applicant has clearly demonstrated that it is physically impossible to acquire, either through purchase of additional land or through agreement with neighboring property owners, sufficient lands to create a one (1.0) net acre site for purposes of complying with the requirements of said Article 8.1.2. Physical hardship means that geographically contiguous parcels of land do not exist or have already had houses constructed on them. The unwillingness of an adjacent property owner to sell his/her land, or to enter into an agreement with the applicant, or to agree to a reasonable value for his/her land, does not by itself constitute a physical hardship.
- ii. Where geographically contiguous parcels do exist and are available, the applicant has clearly shown with documented proof that he/she has made reasonable attempts to contact owners of such contiguous parcels of land without success. Documented proof shall consist of the written record of contact with the Luna County Clerk and/or Assessor to determine land parcel ownership, copies of certified letters written to the

adjacent land owners by the applicant or his/her agent, and the documentation provided by the U. S. Postal Service that the letter was undeliverable, along with copies of letters and envelopes returned undeliverable to the applicant, or any other proof that the County Commission may determine to be acceptable.

- iii. The applicant has proof from the New Mexico State Department of the Environment that he/she can obtain a liquid waste permit for the size of lot being proposed.

Any other standard deemed to be appropriate in the circumstances by the County Commission.

- v. The application of this ordinance would allow no economically beneficial use of the property.
- vi. The County Commission may waive or modify any of the standards in this Article 8.1.5.2 if it is convinced through submissions by an applicant that the absolute application of a standard imposes or creates an impractical obligation or situation.

8.1.5.3 The County Commission shall not grant any variance which will cause the County to incur or absorb any costs. In granting any variance, the County Commission may impose such conditions as will:

- a) Substantially secure the objectives of the standards set out in this Ordinance;
- b) Protect the health, safety and general welfare of the general public and the immediate property owners;
- c) Impose conditions on the type, quality and design of any proposed construction;
- d) Impose height limits;
- e) Require buffering in the form of fencing and/or vegetation to protect and shield adjacent land uses;
- f) Ensure compatibility with other development in the adjacent area. Compatibility as used here shall include, but is not limited to, the following: land use, height, scale, density, water supply and liquid waste disposal facilities; and,
- g) Accomplish any other purpose and effect deemed advisable and appropriate by the County Commission.

8.1.5.4 Procedure. The following procedure shall apply to all requests for a variance:

- a) All requests for a variance shall be in writing and submitted to the Luna County Planner. The written request shall set out the following information:
  - i. a description of the specific variance requested;

- ii. the reasons for the request;
  - iii. the supporting documentation for such request;
- b) The County Planner shall review the written request for variance for completeness and shall, within ten (10) days of receipt of the request, inform the applicant either that the request is complete or the nature of any additional information that is required. Until the request is complete, no further action shall be taken by the County Planner or the County Commission.
  - c) The County Planner shall confer with and seek the advice of the Code Enforcement Officer and the County Attorney, as appropriate, with respect to the request for variance. The County Commission shall hold a public hearing on all requests for a variance, or a renewal of a variance, under this section. The public hearing shall be held at a regularly scheduled County Commission meeting.
  - d) The County Planner shall notify all property owners within five hundred (500) feet of the subject property and Homeowner's Associations as defined herein, within ½ mile of the property by first class regular mail at least ten (10) days prior to the County Commission meeting at which the variance application will be heard. Such notice shall briefly describe the nature of the variance and the date, time and location of the hearing.
  - e) The County Planner shall submit a written report together with his/her recommendation to the County Commission five (5) days prior to the hearing date.
  - f) Variance requests under this article shall be considered quasi-judicial proceedings to be conducted in accordance with quasi-judicial procedures adopted by the County Commission.
  - g) The written decision and order of the County Commission, together with any conditions, including a requirement for the applicant to post a bond in favor of the County to ensure compliance with any conditions set by the County Commission, shall be prepared, signed and filed with the County Clerk within ten (10) working days after the date the County Commission made its decision. The County Planner shall keep a written record of the variance granted and shall show the location and nature of the variance on a county map specifically designated for that purpose.
  - h) The Luna County Code Enforcement officer shall be responsible for enforcement of any conditions set by the County Commission.

## **ARTICLE 9 MANUFACTURED HOME PARKS**

Any person that is desirous of developing land in Luna County for use as a manufactured home park shall comply with the following provisions:

### **9.1 PURPOSE AND INTENT**

The regulations, restrictions, and requirements of this Section are designed to promote orderly development of manufactured home parks within Luna County, in keeping with the general purposes of this Ordinance. The proprietor or operator of any new manufactured home park established after the effective date of this

ordinance shall disclose to all tenants or owners therein, as the case may be, that used or refurbished manufactured homes are permitted in said park.

## 9.2 DEFINITION

9.2.1 A lot, block or parcel of land, or a site, at least five (5) acres in area operated as a unit either under a condominium arrangement or where individual lots are rented for long periods of time, usually the lifetime of the dwelling, and which may contain community water and liquid waste disposal systems, solid waste pick-up and disposal and communal recreation facilities.

9.2.2 Manufactured home parks are hereby considered a subdivision of land for purposes of this Ordinance and therefore subject to the regulations set out in Luna County Ordinance Number 56, "Luna County Subdivision Regulations". The design standards for manufactured home parks set out in Article 9 of this Ordinance are supplemental to the subdivision regulations of Ordinance Number 56, and other design standards as set forth in Ordinance Number 56.

## 9.3 INTERPRETATION AND CONFLICT

The developer of a manufactured home park must comply with the requirements of this Ordinance and with those set out in this Article. Where the requirements of this Article conflict with the regulations set out in other Articles of this Ordinance, or with any other County ordinance, the more restrictive regulation shall apply in each case.

## 9.4 SITE CONDITIONS

The condition of soil, ground water level, drainage and topography shall not create hazards to the property or to the health and safety of the occupants. Manufactured home parks shall be in compliance with all technical standards and requirements of this ordinance, including, but not limited to: water supply; water quality; liquid waste disposal; solid waste disposal; and terrain management.

9.4.1 Standards for Manufactured Home Parks. In any district or zone in which manufactured homes are permitted, the following regulations and minimum standards shall apply:

### 9.4.1.1 Safety separations and water and liquid waste disposal

- a. Only one manufactured home and its accessory buildings or structures shall be erected on each lot in the park.
- b. Lots in a manufactured home park utilizing community water and community liquid waste disposal systems, shall be no less than six thousand (6,000) square feet in area for a single-wide manufactured home and nine thousand (9,000) square feet for a multi-section manufactured home. These areas are net square footages.
- c. Lots in a manufactured home park having no community water and/or liquid waste disposal systems shall be a minimum of one (1.0) net acre in area.
- d. The separation between manufactured homes and each of their detached accessory buildings shall be a minimum of fifteen (15) feet.
- e. The separation between manufactured homes or manufactured home pads shall be a minimum of twenty-five (25) feet.

f. Lot numbering and street names of the manufactured home park shall be approved by the County Planner.

9.4.1.2 Access to Park. Direct vehicular access to the manufactured home subdivision shall be provided by means of an abutting, approved public County road or street. The width and construction of the access streets or roads shall be suitable for the vehicular traffic requirements of the properties served. Sole vehicular access shall not be from an alley or laneway.

9.4.1.3 Entrances and Exits. Entrances and exits shall be designed for safe and convenient movement of traffic into and out of the manufactured home park, and to minimize marginal friction with free movement of traffic on adjacent streets. All traffic into and out of the manufactured home park shall be through such entrances and exits.

9.4.1.4 Internal Streets or Roads. Streets or roads shall be provided within manufactured home parks to furnish principal traffic ways for safe and convenient access to all lots, and to facilities for common use by manufactured home park residents. Such streets or roads shall be privately owned, constructed and maintained. The following provisions will apply to internal streets or roads.

- a. No street or road within a manufactured home park will be accepted for maintenance by Luna County. Such streets and roads shall remain the responsibility of the owner(s) of the lands.
- b. Street alignment and gradient shall be properly designed and adapted to the site topography, to the safe movement of the types and volumes of traffic expected, and to satisfactorily control surface and ground water.
- c. All streets or roads shall provide for the continuation of appropriate projections of streets and roads in the surrounding areas, and provide reasonable means of ingress and egress for surrounding tracts of land.
- d. Streets shall be extended, as topography permits, to the boundaries of the manufactured home park to provide future connections with adjoining unplatted lands.
- e. A sound, all-weather driving surface shall be provided and maintained.
- f. All two (2) lane streets or roads shall allow at least twenty (20) feet free width. Space for on-street parking shall not be taken from this width.
- g. Street widths shall be sufficient to permit free movement from or to the stream of traffic on public streets or roads and no parking shall be permitted that in any way interferes with such free movement.
- h. An internal system of pedestrian walkways shall be provided so that residents can gain safe access to common facilities or services within the manufactured home park or to public walkways on adjacent public County streets or roads, all to the satisfaction of the County Planner.

9.4.1.5 Parking Spaces. Parking spaces shall be provided in sufficient numbers to meet the needs of the residents and guests. At a minimum, two (2) off street parking spaces shall be provided for each lot. Guest parking may be provided in one or more convenient locations. A minimum of one guest space shall be provided for each lot.

- 9.4.1.6 Driveways. A manufactured home park shall provide a driveway, either paved, graveled, or covered with similar material, on each lot. Driveways serving each manufactured home lot shall be a minimum width of ten (10) feet. Driveways shall also be provided where necessary for convenient access to collection points for refuse and other materials, and to common area facilities established for the residents.
- 9.4.1.7 Recreation/Open Space Area. A minimum of five percent (5%) of the gross land area covered by the manufactured home park shall be devoted to open space for recreational purposes. The open space shall be centrally located.
- 9.4.1.8 Exterior Lighting. All exterior lights shall be located and shielded so as to prevent direct illumination of any contiguous lot. All exterior lighting shall adhere to the requirements of the Night Sky Protection Act, §§74-12-1 through 74-12-11.
- 9.4.1.9 Residential Occupancy. No manufactured home and no manufactured home lot shall be used for any purpose other than residential occupancy.

## **ARTICLE 10 RECREATIONAL VEHICLE PARKS**

### 10.1 RECREATIONAL VEHICLE DEFINED

A self-contained driven or towed portable unit not designed to be installed on a temporary or permanent foundation nor used for human occupancy as a residence which includes: pickup campers, chassis mounted motor homes, mini motor homes, park trailers, recreational vans, pop-up tent/hard-top trailers, converted buses, or other converted and chopped vehicles.

### 10.2 MOBILE HOMES PROHIBITED

Mobile Homes as defined in this Ordinance are prohibited in Recreation Vehicle Parks.

### 10.3 RECREATIONAL VEHICLE PARK DEFINED

A lot, block or parcel of land, or a site, at least one (1) acre in area containing facilities such as potable water, liquid waste disposal facilities, electrical hook-ups, and recreation facilities, and designed to accommodate overnight or longer-term parking of three (3) or more recreational vehicles.

### 10.4 INTERPRETATION AND CONFLICT

The developer of a recreational vehicle park must comply with the requirements of this Ordinance and with those set out in this Article. Where the requirements of this Article conflict with the regulations set out in other Articles of this Ordinance, or with any other County ordinance, the more restrictive regulations shall apply in each case.

### 10.5 SITE CONDITIONS

The condition of soil, ground water level, drainage and topography shall not create hazards to the property or to the health and safety of the occupants. Recreational vehicle parks shall be in compliance with all technical standards and requirements of this Ordinance, including, but not limited to: water supply, water quality, liquid waste disposal, solid waste disposal, and terrain management.

- 10.5.1 Standards for Recreational Vehicle Parks. In any district or zone in which recreational vehicle parks are permitted, the following regulations and minimum standards shall apply.
- 10.5.2 Minimum Park Area and Maximum Density. Recreational Vehicle parks shall be a minimum of one (1) acre in area and shall not exceed a maximum density of five (5) recreational vehicle spaces per gross acre, excluding all dry camp sites which shall not exceed 10 per acre.
- 10.5.3 Setbacks and Separation Distances. Setbacks and separation distances in recreational vehicle parks shall be in accordance with the following:
- 10.5.3.1 The separation between recreational vehicles shall be a minimum of fifteen (15) feet.
- 10.5.3.2 The front and rear yard setbacks of each recreational vehicle from a private internal road shall be at least fifteen (15) feet.
- 10.5.3.3 The side yard setback of each recreational vehicle from a private internal flanking street shall be a minimum of fifteen (15) feet.
- 10.5.3.4 No recreational vehicle may be located closer than twenty-five (25) feet to a County Road.
- 10.5.4 Access to Park. Direct vehicular access to the recreational vehicle park shall be provided by means of an abutting, approved public County road or street. The width and construction of the access streets or roads shall be suitable for the vehicular traffic requirements of the properties served. Sole vehicular access shall not be from an alley or laneway.
- 10.5.5 Entrances and Exits. Entrances and exits shall be designed for safe and convenient movement of traffic into and out of the recreational vehicle park, and to minimize marginal friction with free movement of traffic on adjacent streets. All traffic into and out of the recreational vehicle park shall be through such entrances and exits.
- 10.5.6 Internal Streets or Roads. Streets or roads shall be provided within recreational vehicle parks to furnish principal traffic ways for safe and convenient access to all lots, and to facilities for common use by recreational vehicle park residents. Such streets or roads shall be privately owned, constructed and maintained. The following provisions will apply to internal streets or roads.
- a) No street or road within a recreational vehicle park will be accepted for maintenance by Luna County. Such streets and roads shall remain the responsibility of the owner(s) of the lands.
  - b) Street alignment and gradient shall be properly designed and adapted to the site topography, to the safe movement of the types and volumes of traffic expected, and to satisfactorily control surface and ground water.
  - c) All streets or roads shall provide for the continuation of appropriate projections of streets and roads in the surrounding areas, and provide reasonable means of ingress and egress for surrounding tracts of land.
  - d) Streets shall be extended, as topography permits, to the boundaries of the recreational vehicle park to provide future connections with adjoining unplatted lands.

- e) A sound, all-weather driving surface shall be provided and maintained.
- f) All two (2) lane streets or roads shall allow at least twenty (20) feet free width. Space for on-street parking shall not be taken from this width.
- g) Street widths shall be sufficient to permit free movement from or to the stream of traffic on public streets or roads and no parking shall be permitted that in any way interferes with such free movement.
- h) An internal system of pedestrian walkways shall be provided so that residents can gain safe access to common facilities or services within the recreational vehicle park or to public walkways on adjacent public County streets or roads, all to the satisfaction of the County Planner.

10.5.7 Parking Spaces. Parking spaces shall be provided in sufficient numbers to meet the needs of the residents and guests. At a minimum, two (2) off street parking spaces shall be provided for each lot.

10.5.8 Driveways. A driveway, either paved, graveled, or covered with similar material shall be provided on each recreational vehicle site. Driveways shall be a minimum width of ten (10) feet. Driveways shall also be provided where necessary for convenient access to collection points for refuse and other materials, and to common area facilities established for the residents.

10.5.9 Exterior lighting. The park perimeter must be adequately lighted. The overall lighting plan must be included with plans submitted to the County for approval. All exterior lights shall be located and shielded so as to prevent direct illumination of any contiguous lot. All exterior lighting shall adhere to the requirements of the Night Sky Protection Act §§74-12-1 through 74-12-11.

10.5.10 Potable Water and Liquid Waste Disposal. Each recreational vehicle park shall provide and utilize an approved community water system and an approved community liquid waste disposal system.

10.5.11 Utility connections. All recreational vehicle parks shall provide individual water, liquid waste, and electrical connections for each recreational vehicle space unless water is available within 100 feet of each recreational vehicle space, and there are at least two (2) liquid waste dump facilities for every five (5) acres, or fraction thereof, of the park.

Natural gas or liquid propane gas connections to individual lots are prohibited.

10.5.12 Utility easements. Utility easements shall be provided as required by the various utility companies.

10.5.13 Residential Occupancy. No recreational vehicle and no recreational vehicle space shall be used for any purpose other than residential occupancy.

10.5.14 Expansion of Existing Recreational Vehicle Parks. Expansion of existing recreational vehicle parks is permitted provided the expansion and any proposed changes to the existing park meet all applicable requirements of Article 10.5 of this Ordinance and all other applicable requirements of this Ordinance.

10.5.15 Number of Units Per Acre. In accordance with NMED regulations, the number of units cannot exceed 5 per acre. See Article 10.5.2.

**ARTICLE 11      EXISTING MOBILE HOME PARKS**

11.1      EXISTING MOBILE HOME PARKS

Mobile home parks existing on the effective date this Ordinance are permitted in Luna County.

11.2      EXPANSION OF EXISTING PARKS

Expansions to existing mobile home parks are permitted provided the expansion and any proposed changes to the existing park meet all requirements of Article 9, and all other applicable requirements and processes set out in this Ordinance. Mobile Homes shall not be moved from areas outside the borders of Luna County to any existing mobile Home Park or to any individual lot or site in Luna County. Single-wide manufactured homes, both new homes and homes that have been refurbished to Housing and Urban development standards and to all applicable requirements of the International Building Code and the Rules and Regulations of the Manufactured Housing Division of the Regulation and Licensing Department of the State of New Mexico, are permitted in existing mobile home parks or expansions to existing parks. Recreation Vehicles, travel trailers, campers and similar vehicles or structures are not permitted as replacement units in an existing mobile home park or an expansion to the existing park.

**ARTICLE 12      SALVAGE YARDS**

12.1      SALVAGE YARDS REGULATIONS

12.1.1      Any Salvage Yard established after the effective date of this Ordinance must be legally established in compliance with the laws prevailing in Luna County, and all applicable State and Federal environmental laws and regulations. The owner/operator is responsible for identifying all hazardous materials used, processed, stored or handled at the facility and for maintaining updated qualitative and quantitative records of these materials at the facility.

The abandonment or unauthorized release of hazardous materials is prohibited. No person shall cause, permit, suffer, or allow the usage, storage, abandonment or disposal of hazardous material:

- a)          in a manner which violates a provision of any federal, state, or local government regulations; or
- b)          in a manner which causes, or may cause, an unauthorized release of hazardous material.

12.1.1.1      All hazardous material shall be properly stored and be accessible to inspection at anytime.

12.1.1.2      Only salvage yards licensed by the New Mexico Department of Motor Vehicles may carry on or conduct the active trade or business of dismantling any vehicle for the resale of parts. Any person possessing three (3) or more wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts.

12.1.1.3      Any legally established Salvage Yard shall be adequately screened as defined below.

12.1.2      Any Salvage Yard existing on the effective date of this Ordinance shall, on or before May 3, 2002, be adequately screened from any public right of way or from any residential property within one thousand (1000) yards of the Salvage Yard.

- 12.1.3 “Adequately Screened” for purposes of this Section, shall mean solid or opaque fencing, or trees, shrubs or other vegetation that is of sufficient height and density to fully obscure the view of the salvage materials from a point eight (8) feet above the ground on any public right of way or any residential property within one thousand (1,000) yards of the Salvage Yard. Construction materials, such as lumber, brick or stone used for fencing and screening shall be durable and in good condition, securely anchored and fastened to protect from damage sustained by wind. Use of old metals, poor quality building materials, and materials such as wood boxes, crates or pallets, and used tires is prohibited, unless previously approved by the LCBO or the Code Enforcement Officer. Building Permits are required for fences over 6 feet in height.
- 12.1.4 Any unlicensed salvage yard existing on any site in Luna County on the effective date of this Ordinance shall discontinue all operation within three hundred and sixty-five (365) days of the effective date of this Ordinance. All salvage materials and any and all items intended for salvage, and all equipment and machinery associated with the salvage operation shall be removed from the site to either a licensed salvage yard or to a location outside of Luna County. The site shall be left in a clean and tidy condition to the satisfaction of the Luna County Code Enforcement Officer. Failure to comply may result in the County invoking abatement measures as set out in Article 6.8.4 of this Ordinance. Any owner of such site that does not comply with this Section shall be subject to the penalties set out in Article 18 of this Ordinance.
- 12.1.5 Any person, property owner, or property occupant that commits or knowingly allows the commission of any act in violation of this Article 12 of this Ordinance, shall, upon conviction, be subject to the same penalties as set forth in Article 18 of this Ordinance.

**ARTICLE 13 TOWING OPERATIONS**

13.1 TOWING OPERATIONS: SCREENING

- 13.1.1 All towing services operating in Luna County shall be legally established and shall abide by the following regulations:
  - a) All vehicles, including trailers and mobile homes, towed by a towing service shall be stored in a yard that is adequately screened. For purposes of this section “adequately screened” shall have the same meaning as is set out in Article 12.1.3 of this Ordinance.

**ARTICLE 14 DEALERS, WRECKERS, DISMANTLERS**

14.1 DEALERS, WRECKERS, DISMANTLERS: REGULATIONS

- 14.1.1 All dealers, wreckers, wholesalers and distributors of any vehicle, and title service companies and any towing operation engaged in the business of selling, wrecking, wholesaling or distributing vehicles, shall be legally established, meaning licensed by the Motor Vehicle Division of the Department of Taxation and Revenue as set out in Section 66-4-1, NMSA, 1978.
- 14.1.2 Any dealer, or wrecker, or any towing service engaged in the business of the dealing or the wrecking of vehicles, shall comply with the following regulations and criteria:

- a) An established place of business must be maintained. An established place of business shall be as defined in the State Motor Vehicle Code and for purposes of this Ordinance shall mean a place:
  - i. devoted exclusively to the business for which the dealer or wrecker is licensed and the business incidental thereto;
  - ii. identified by a prominently displayed sign giving the dealer's or wrecker's trade name used by the business;
  - iii. of sufficient size or space to permit the display of one or more vehicles or to permit the parking or storing of vehicles to be dismantled or wrecked;
  - iv. on which there is located an enclosed building on a permanent foundation, which building meets the building requirements of Luna County, and is large enough to accommodate the office or offices of the dealer or the wrecker and large enough to provide a safe place to keep the books and records of the dealer or wrecker;
  - v. where the principal portion of the business of the dealer or wrecker is conducted and where the books and records of the business are kept and maintained; and,
  - vi. where vehicle sales are of new vehicles only, such as a department store or a franchise of a department store, as long as the department store or franchise keeps the books and records of its vehicle business in a general office location at its place of business. As used in this section, "department store" means a business that offers a variety of merchandise other than vehicles, and sales of the merchandise other than vehicles constitutes at least eighty percent of the gross sales of the business.

14.1.3 Any title service company must maintain a physical place of business accessible to the public. Each such place of business shall be open to inspection by a peace officer or the Department of Taxation and Revenue during reasonable business hours.

**ARTICLE 15 BURIAL AND DISPOSAL OF HUMAN REMAINS**

15.1 APPLICATIONS

15.1.1 Article 15 applies only to the burial or disposal of human remains outside of formally designated cemeteries, either public or private.

15.2 UNLAWFUL BURIAL

15.2.1 In accordance with Section 30-12-14 NMSA, 1978, no person shall use any land or lands as a burial place or a place of interment within fifty (50) yards from either side of the bank or border of any stream, river or any body of water. Anyone who does not comply with this section is guilty of a misdemeanor.

15.2.2 No person shall use any land or lands as a place of burial or a place of interment within one hundred (100) yards of any County or State road, right-of-way, easement, or other public way.

### 15.3 REGULATIONS

15.3.1 Any person using any land or lands as a place of burial for human remains anywhere in Luna County outside of a designated cemetery, either public or private, shall comply with the following regulations;

- a) Prior to interment of any human remains, a member of the family or other duly authorized person such as the executor of the estate or an attorney representing the deceased, shall file with the County Clerk and the County Planner a copy of the Warranty Deed showing proof of ownership of the land where interment is to take place and a copy of a survey plat, prepared by a land survey licensed in the State of New Mexico, showing the location of the grave or place of burial.
- b) The survey plat shall:
  - i. show a measured tie between the grave and a registered survey monument;
  - ii. show the location of any stream, river, creek or other body of water within fifty (50) yards of the burial site;
  - iii. show the location of any private roads or easements, or any County or State road, right-of-way, easement or other public way, and any structure or well or septic system within two hundred yards of the proposed burial site;
  - iv. shall indicate the means of access to the burial site, and whether such access is vehicular or pedestrian.
  - v. indicate if, and how, the grave site is to be marked.

15.3.2 Provided that the information provided in Article 15.3.1 of this Ordinance indicates that there is no breach of Articles 15.2.1 or 15.2.2 of this ordinance, and the information required by Article 15.3.1 of this Ordinance is satisfactory, the County Planner shall issue a letter to the applicant and the County Clerk authorizing the requested burial site.

15.3.3 Upon receipt of the approval letter from the County Planner, the County Clerk shall record the plat in a separate index for burial plots.

## **ARTICLE 16 WASTE TIRES, BALED AND NON-BALED: STORAGE AND USE**

### 16.1 GENERAL PROHIBITION

16.1.1 No waste or scrap tires, baled or non-baled, nor any processed tires, nor any used tires, shall be stored or used for any purpose on any site or lot in Luna County without the owner of such site or lot, or his/her authorized agent, obtaining a valid permit for such storage or use from Luna County. Excluded from this requirement are: a retail business premise where new and used tires are normally sold; and a business where a tire retreading business is carried on provided no more than five hundred (500) waste or scrap tires are kept on the business premises at any one time.

16.1.2 No use of waste or scrap tires, baled or non-baled, or processed tires, shall be permitted on any lot or site in Luna County without the owner of such lot or site, or his/her authorized agent, first obtaining a permit from Luna County for such use. Any use proposed shall be a beneficial use and whether such proposed use is judged to be beneficial shall be in the sole discretion of Luna County.

## 16.2 USE OF WASTE TIRES FOR CONSTRUCTION

16.2.1 No use of waste or scrap tires, baled or non-baled, or processed tires, or used tires for the construction of any building or structure is permitted on any site or lot in Luna County unless all of the following conditions are met to the satisfaction of Luna County:

- a) such proposed use constitutes no environmental hazard and that it will not endanger the health or safety of the residents of Luna County. To this end, Luna County may require the owner or his/her authorized agent to produce and submit to the County an environmental impact assessment prepared by a qualified Environmental Consultant showing no adverse environmental impact. Prior to taking any decision, the County may consult with any state agency or it may engage its own consultant to undertake an oversight review of the environmental impact assessment prepared by the owner's or his/her authorized agent's consultant;
- b) a building permit is obtained from the Construction Industries Division of the State of New Mexico;
- c) written approval is obtained from the Fire Marshall, or other authorized official, which written approval shall state clearly that there is sufficient fire suppression measures in place on the lot or site; and, that in his/her opinion Luna County has the capability to effectively deal with any building or structure fire that may occur. The Fire Marshall may also prescribe specific fire prevention measures that shall be taken by the owner or his/her authorized agent;
- d) the owner or his/her authorized agent shall submit design and construction plans to the County Planner and to the Construction Industries Division showing clearly the use of waste or scrap tires, or processed tires, and that such design complies with all requirements of the International Building Code. These drawings shall be stamped and signed by a professional engineer licensed in the State of New Mexico, or by an architect licensed in the State of New Mexico;
- e) a financial guarantee in favor of Luna County, in the form of a bond, cashier's check, or other form satisfactory to the Luna County Attorney, and in an amount satisfactory to Luna County shall be posted with the County Clerk. The amount of the financial guarantee shall be sufficient to cover the full cost of any clean-up, disposal of materials, and the removal of all buildings and structures on the site or lot. The amount of the financial guarantee shall be in the sole discretion of Luna County. The owner, or his/her authorized agent shall keep the financial guarantee current. The County shall retain the right to request an increase in the financial guarantee as circumstances warrant; and,
- f) a permit for the proposed use is obtained from the Luna County Planning Department. The County shall not issue any permit unless and until it is fully satisfied that conditions set out in Article 16.2.1 a), b), c), d) and e) of this Ordinance have been fulfilled.

- 16.2.3 If the owner or his/her authorized agent, or any successor, fails to maintain full compliance with the conditions upon which approval of a proposed use is given, the County, after giving notice to comply, may revoke the permit. Upon revocation, all operations shall cease and site clean-up shall commence immediately.

## **ARTICLE 17 ENFORCEMENT AND PROCEDURES**

### 17.1 ENFORCEMENT

This Ordinance shall be enforced by the Luna County Code Enforcement Officer or other official designated by the Luna County Board of Commissioners or the Luna County Manager.

### 17.2 PROCEDURES UPON DISCOVERY OF VIOLATIONS

- 17.2.1 Articles 6.8.5 through 6.8.7 of this Ordinance shall be enforced as set forth therein.
- 17.2.2 Where the County receives a written, signed complaint alleging a violation of any other provision of this Ordinance, or where the County discovers that any provision of this ordinance is being violated, the Code Enforcement Officer shall send a written notice to the owner of the subject property stating the nature of the violation and ordering the action necessary to correct it. The notice shall provide that action must be taken in no less than ten (10) days and no more than ninety (90) days from the date of the notice.
- 17.2.3 Extension of Time. Where the Code Enforcement Officer is satisfied that there is good and sufficient reason to extend the time period for correction of the violation, he/she may extend the time frame provided in Article 17.2.2 of this Ordinance for an additional period of time not to exceed sixty (60) days beyond the time frame set out in the original notice given under said Article 17.2.2.
- 17.2.4 Emergency Situations. Notwithstanding the provisions of Articles 17.2.2 and 17.2.3 above, where the Code Enforcement Officer determines that a delay in correcting a violation would pose a danger to the public health, safety or welfare, he/she may seek enforcement without prior written notice by invoking the procedures, penalties or remedies set out in Articles 6.8.3, 6.8.4 and 6.8.5 of this Ordinance.

## **ARTICLE 18 PENALTIES AND REMEDIES**

Any person violating or failing, or refusing to comply with the provisions of this Ordinance and the Codes adopted may be prosecuted in any court of competent jurisdiction within the County, and shall be punished by (1) a fine not more than three hundred dollars (\$300) or imprisonment for not more than ninety (90) days, or both, (2) no more than one thousand dollars (\$1,000) for discarding or disposing of refuse, litter or garbage on public or private property in any manner other than by disposing it in an authorized landfill; (3) no more than five thousand dollars (\$5,000) for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978]; and in accordance with Section 4-37-3 NMSA 1978. The Board of County Commissioners may apply to the District Court for appropriate injunctive relief to compel compliance by any person within the provisions of this Ordinance. After the effective date of this ordinance, all violations are subject to issuance of a citation.

**ARTICLE 19 SEVERABILITY**

If any article, section, subsection, paragraph, sentence, clause, phrase, provision, standard or any portion thereof of this Ordinance is, for any reason, held to be unconstitutional, invalid, or void, the remaining portions shall not be affected since it is the express intention of the Luna County Board of Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase, provision, standard, and every part thereof separately and independently from every other part.

**ARTICLE 20 EFFECTIVE DATE AND REPEAL**

This Ordinance shall be recorded and authenticated by the County Clerk following adoption by the Board of County Commissioners. The effective date of this Ordinance shall be thirty (30) days after the Ordinance has been recorded.

Adoption of this Ordinance hereby repeals Luna County Ordinance No. 37, Revised, as of December 12, 2002, and shall be known as Luna County Ordinance No. 37, Second Revision.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006,

Board of County Commissioners,  
Luna County, New Mexico.

By \_\_\_\_\_  
Richard L. Holdridge, Chairman

ATTEST:

\_\_\_\_\_  
Karen Smyer, County Clerk