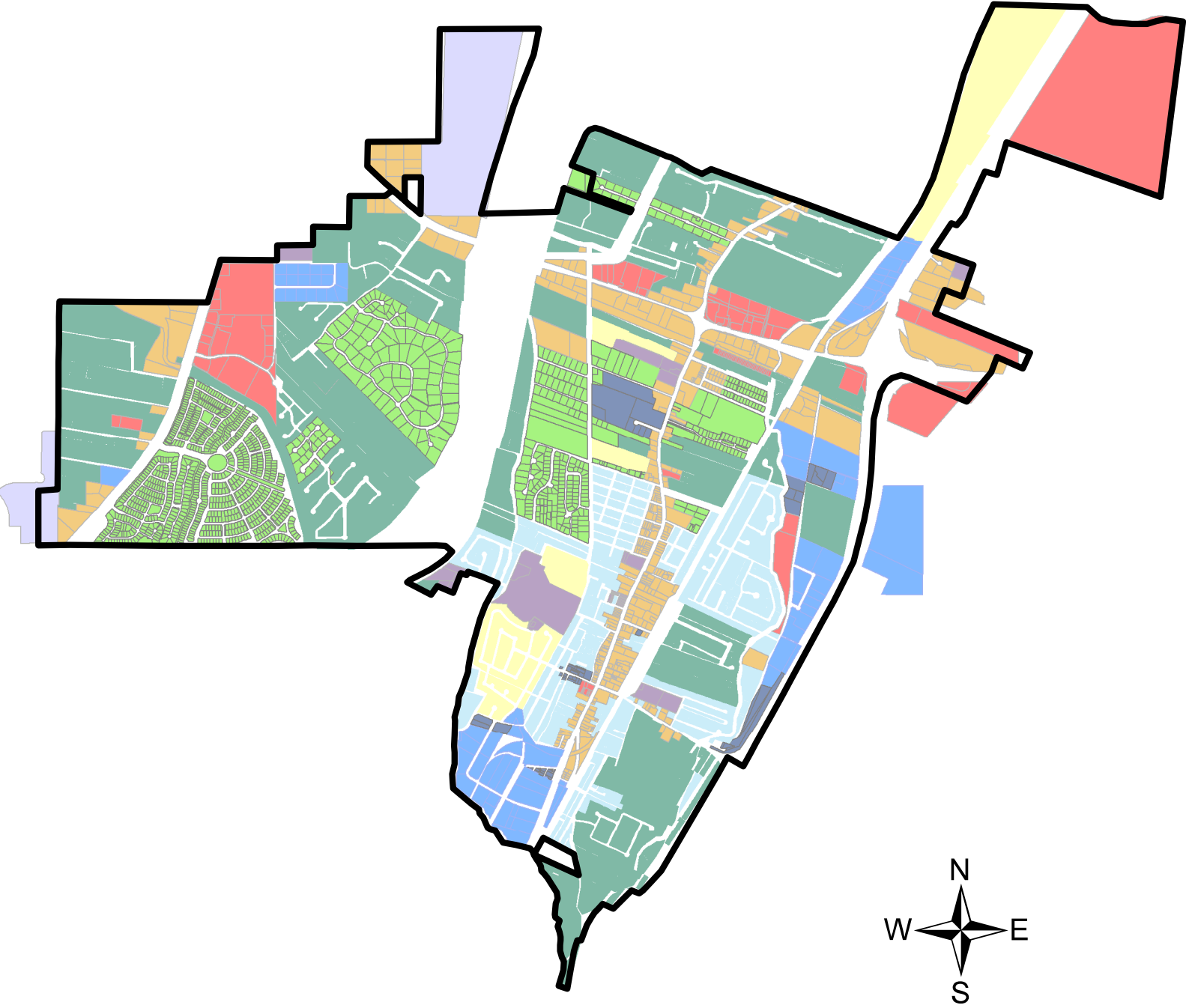


TOWN OF BERNALILLO, NEW MEXICO

ZONING ORDINANCE

Adopted January 27, 2020 (Ord. 310)
Amended October 11, 2021 (Ord. 321)
Amended November 14, 2022 (Ord. 334)



**COMPREHENSIVE ZONING ORDINANCE
for the
TOWN OF BERNALILLO
SANDOVAL COUNTY, NEW MEXICO**

Adopted by the Board of Trustees
of the
Town of Bernalillo

January 27, 2020

Prepared by:
MID-REGION COUNCIL OF GOVERNMENTS OF NEW MEXICO
809 COPPER AVE. NW, ALBUQUERQUE, NEW MEXICO 87102

AMENDMENTS/ATTACHMENTS:

- 1. Ord. 321 Adopted 10/11/2021 - Cannabis Regulations**
- 2. Ord. 334 Adopted 11/14/2022 - Biennial General Amendments**

TABLE OF CONTENTS

SECTION	TITLE	PAGE
SECTION 1.	TITLE	3
SECTION 2.	PURPOSE	3
SECTION 3.	JURISDICTION	3
SECTION 4.	INTERPRETATION AND CONFLICT	3
SECTION 5.	DEFINITIONS	4
SECTION 6.	APPLICATION OF ZONING MAP	15
SECTION 7.	ESTABLISHMENT OF ZONE DISTRICTS	15
SECTION 8.	R-R RURAL RESIDENTIAL ZONE	16
SECTION 9.	R-1 SINGLE-FAMILY RESIDENTIAL ZONE	18
SECTION 10.	R-1A MIXED SINGLE-FAMILY RESIDENTIAL ZONE	20
SECTION 11.	R-2 MULTIPLE-FAMILY RESIDENTIAL ZONE	22
SECTION 12.	C-R COMMERCIAL RESIDENTIAL ZONE	24
SECTION 13.	C-1 COMMERCIAL ZONE	27
SECTION 14.	M-1 LIGHT INDUSTRIAL ZONE	31
SECTION 15.	SPECIAL USE ZONE	33
SECTION 16.	PLANNED UNIT DEVELOPMENT (PUD) ZONE	36
SECTION 17.	MAINSTREET OVERLAY ZONE. [Revised 4-11-2005, Ord. No. 202]	37
SECTION 18.	HOME OCCUPATIONS	40
SECTION 19.	PROCESS, APPLICATION AND APPROVALS	41
SECTION 20.	OFF-STREET PARKING REQUIREMENTS	49
SECTION 21.	GENERAL SIGN REGULATIONS	52
SECTION 22.	FENCES, LIGHTING AND LANDSCAPING REQUIREMENTS	53
SECTION 23.	NONCONFORMING USES, LOTS AND STRUCTURES	54
SECTION 24.	ADMINISTRATION	55
SECTION 25.	APPLICATION AND FILING FEES	56
SECTION 26.	ENFORCEMENT, VIOLATIONS AND PENALTIES	56
SECTION 27.	SEVERABILITY	58
SECTION 28.	REPEAL	58
SECTION 29.	EFFECTIVE DATE	58

ORDINANCE NO. 310

AN ORDINANCE ADOPTING COMPREHENSIVE ZONING REGULATIONS,
INCLUDING THE EFFECTIVE ZONING MAP, FOR THE TOWN OF BERNALILLO, NEW MEXICO;
AND REPEALING ORDINANCE NO. 175.

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF
BERNALILLO, NEW MEXICO, AS FOLLOWS:

SECTION 1. TITLE.

These regulations shall be known as the “COMPREHENSIVE ZONING ORDINANCE” of the Town of Bernalillo, New Mexico, and shall be referred to herein as “this Ordinance.”

SECTION 2. PURPOSE.

It is intended by this Ordinance to promote the general health, safety, morals, convenience, and welfare of the people within the Town of Bernalillo zoning jurisdiction. These regulations are required to provide adequate space for light and air; to avoid undue concentration of population; to secure safety from fire, panic, and other dangers; to control congestion in the streets and public ways; to control and abate the unsightly use of buildings or land; to facilitate provisions for community services and public requirements; to encourage the most appropriate use of land; to preserve cultural and historic properties; and to conserve and stabilize the value of property [3-21-1 NMSA 1978].

SECTION 3. JURISDICTION.

This Ordinance shall apply to all lands within the municipal boundary of the Town, including such lands as may be subsequently annexed to the Town. This Ordinance governs all real property located within the zoning jurisdiction of the Town. Boundaries delineating the zoning jurisdiction of the Town shall be as indicated on the Official Zone Map of the Town, maintained separately from this ordinance. The updated map shall be available at the Town offices.

SECTION 4. INTERPRETATION AND CONFLICT.

The provisions of this Ordinance are held to be minimum requirements to carry out the purpose of this Ordinance and are not intended to interfere with or annul any easement, covenant, or other valid ordinance except that which is described by the Repeal Section of this Ordinance. Where this Ordinance imposes a greater restriction than is required by existing regulations, easements, covenants, agreements, or ordinances, the provisions of this Ordinance shall control. Regardless of any other provision of this Ordinance, no land shall be used and no structure erected or maintained in violation of any State or Federal pollution control or environmental regulation.

SECTION 5. DEFINITIONS.

Words used in the present tense include the future tense. The singular number includes the plural and plural the singular. The following definitions apply:

ABUTTING/ADJACENT: Having a common border with, or being separated from such a common border by a right-of-way, alley, or easement.

ACCESSORY BUILDING OR STRUCTURE: A building detached from and subordinate to the main building and located on the same lot or parcel of land with the main building, the use of which is subordinate and incidental to that of the main building or main use of the land, such as a detached garage, workshop or studio. It may have a bathroom but shall not have a kitchen. An accessory building or structure shall not be used as a dwelling (see Dwelling Unit, Accessory).

ACCESSORY DWELLING UNIT: See definition for Dwelling Unit, Accessory.

ACCESSORY USE: A use of land or of a building or portion thereof that is incidental and subordinate to the main use of the land or building and located on the same lot with the main use.

ALLEY: A public thoroughfare which affords only a secondary means of access to abutting property.

APARTMENTS: A building containing three or more dwelling units, arranged, intended, or designed to be occupied by three or more families living independently of each other and each having a separate kitchen in each dwelling unit.

ASSISTED LIVING FACILITY: An establishment, licensed by the State of New Mexico, where two or more adults may live and receive assistance with activities of daily living, such as dressing, grooming, bathing, meals, etc. but where acute care, continuous nursing care or skilled nursing care is not provided.

AUTOMOBILE: A vehicle, except motorcycles, designed for carrying ten passengers or less and used for the transportation of persons.

BAR: An establishment or part of an establishment used primarily for the sale or dispensing of beer, wine, or liquor by the drink.

BED AND BREAKFAST: A dwelling containing at least one but not more than five guest rooms where lodging is provided with or without meals for compensation.

BILLBOARD: A type of on or off-premise sign that may have a static message board or a changeable, electronic message board and is otherwise regulated by the State of New Mexico Highway Beautification Act (§67.12.1 Et. Seq., NMSA 1978). Also called "bulletins", "digital billboard" and "outdoor advertising".

BUILDING: A structure built, maintained, or intended to be used for the shelter or enclosure of people, animals, property, or business activity. Temporary structures such as tents are not buildings.

BUILDING FRONT: The facade of a building that abuts the lot's front setback and/or the lot's Legal

access. There shall be one building front designated per building.

BUILDING HEIGHT: The vertical distance from the grade to the highest point of a roof.

BUILDING INSPECTOR: The person qualified and designated by the Town Council to review building plans, issue building permits, and conduct building construction inspections on behalf of the Town.

BUILDING, MAIN: The building occupied by the primary use of the lot on which the building is located.

BUILDING WALL AREA: Also called building face area. The total area of a building facade, including windows and doors.

CANNABIS: All parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include: (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.

CANNABIS CONSUMPTION AREA: An area where cannabis products may be served and consumed. Not permitted in Town.

CANNABIS ESTABLISHMENT: Means a cannabis testing laboratory, cannabis manufacturer, cannabis producer, cannabis retailer, cannabis research laboratory, vertically integrated cannabis establishment, cannabis producer microbusiness or an integrated cannabis microbusiness, as defined herein and in HB0002.

CANNABIS MANUFACTURER: A person that manufactures cannabis products, packages cannabis products, has cannabis products tested by a cannabis testing laboratory, or purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

CANNABIS PRODUCER: A person that cultivates cannabis plants, has unprocessed cannabis products tested by a cannabis testing laboratory, transports unprocessed cannabis products only to other cannabis establishments or sells cannabis products wholesale.

CANNABIS PRODUCER MICROBUSINESS: A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

CANNABIS PRODUCT: A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

CANNABIS RESEARCH LABORATORY: A facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

CANNABIS RETAIL ESTABLISHMENT: A location at which cannabis products are sold to qualified patients,

primary caregivers and reciprocal participants and directly to consumers.

CANNABIS TESTING LABORATORY: A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

CARPORT: A structure open on at least three sides and used to shelter automobiles or other vehicles.

CLEAR SIGHT TRIANGLE: A triangular space bounded by the corner property lines and a diagonal line connecting points that are 30 feet in distance from the property line intersection.

CLERK: The Clerk of the Town of Bernalillo.

CLINIC: An establishment occupied by one or more members of the medical profession for the purpose of providing medical services.

CLUB: Any membership organization catering exclusively to members and their guests and whose facilities are limited to meeting, eating and/or recreational uses, and further whose activities are not conducted for monetary gain; including but not limited to civic, fraternal, charitable, religious, social and patriotic organizations.

CLUBHOUSE: A building to house a club or social organization not conducted for monetary gain.

CLUSTER DEVELOPMENT: A form of development that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development and the remaining land area is devoted to open space, active recreation, preservation of environmentally sensitive areas, or agriculture.

CODE ENFORCEMENT OFFICER: The Town employee responsible for implementing and enforcing the applicable building codes and standards of the Town.

COMMISSION: The Planning and Zoning Commission of the Town of Bernalillo.

COURTYARD: An open space that is more than half surrounded by a single building or buildings.

DATA CENTER, LARGE: A facility that is 10,000 square feet or greater in size and houses a group of networked computer servers typically used by organizations for the remote storage, processing or distribution of large amounts of data with daily, on-site employees.

DATA CENTER, MICRO: A facility that is less than 10,000 square feet in size and houses a group of networked computer servers typically used by organizations for the remote storage, processing or distribution of large amounts of data with no daily, on-site employees.

DAY CARE CENTER: A licensed and permitted facility where care, protection, and supervision are provided for children on a regular schedule for a fee.

DAY CARE CENTER, ADULT: A non-residential facility that supports the health, nutritional, social, and daily living needs of adults in a professionally staffed, group setting.

DISTRICT: Any section of the Town of Bernalillo where regulations governing the use of buildings and premises, the height and area of buildings, and lot area are uniform. Also referred to as “zone district,” or “zone” in this Ordinance.

DUPLEX: A building containing two dwelling units, arranged, intended or designed to be occupied by two families living independently of each other and having a separate Kitchen in each dwelling unit.

DWELLING, MULTIFAMILY: A building arranged or designed to be occupied by three or more families living independently of each other and having a separate Kitchen in each dwelling unit. 200 square feet of usable open space per unit is required for multifamily developments.

DWELLING, SINGLE-FAMILY: A building arranged or designed to be occupied by one family, the structure having only one dwelling unit.

DWELLING UNIT: One or more rooms and a single Kitchen designed as a unit for occupancy by one family for living and sleeping purposes, but not including a recreational vehicle, travel trailer, or converted bus. A dwelling unit may be a mobile home, modular home, manufactured home, site-built house, or an independent unit of an apartment, townhouse, or other such multiple-unit residential structure.

DWELLING UNIT, ACCESSORY: A subordinate dwelling unit either attached to a single-family main dwelling, or located on the same lot and having an independent means of entry. Accessory dwelling units may have a Kitchen and for the purposes of this Ordinance are limited to 800 square feet in size [3-21-1, F, G NMSA 1978].

EASEMENT: A grant of beneficial use by the owner for the use by one or more persons or the public.

EATING AND DRINKING ESTABLISHMENT: Retail establishment serving food or drink for immediate consumption on the premises, including restaurants, lunch counters, refreshment stands, and ice cream parlors.

FACILITY: A structure or place which is built, installed, or established to serve a particular purpose.

FAMILY: An individual or two or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together in a dwelling unit.

FLOOR AREA: The area included within the surrounding walls of a building, measured in square feet from the outside surface of outside walls, excluding courtyards.

FLOOR AREA, GROSS: The sum of all the floor areas of a building or buildings, measured from the exterior of the supporting walls or supporting devices, including all accessory buildings on the same lot.

FLOOR AREA, FINISHED: The floor area of a building that is heated and therefore habitable. This excludes the floor area of unfinished parts of a building or structure such as garages, porches, attics, courtyards, or driveways.

FOOD TRUCK: (See “Mobile Food Establishment”)

FRONTAGE: The width of a lot measured along a street right-of-way, or measured at the front setback line in the case of lots on the end of a cul-de-sac.

GARDEN, COMMERCIAL. The growing of fruits, vegetables, flowers and herbs for human consumption, commercial sale, educational purposes and/or commercial attraction such as an arboretum, botanic garden, nursery or garden center.

GARDEN, NON-COMMERCIAL. The growing of fruits, vegetables, flowers and herbs for human consumption but not for commercial sale, such as a private or neighborhood community garden.

GAS STATION: Any building and premises used principally for the storing, dispensing, sale or offering for retail sale of gasoline, oil and/or liquid fuels.

GOLF COURSE: Nine or eighteen-hole course, which may or may not be associated with a clubhouse, but not including miniature courses or golf driving range.

GRADE: The average of the finished ground level at the center of all walls of a building or the points of support for a structure.

HOME OCCUPATION: A business activity performed on the premises of a dwelling unit by one or more residents where such business activity is secondary and subordinate to the residential use of the premises.

HOTEL/MOTEL: A building where lodging is provided and containing more than five guest rooms. It may include amenities such as a pool, restaurant, or bar within the same building.

INOPERABLE VEHICLE: Any motorized vehicle incapable of immediately being driven. A car, truck, bus, van, or recreational vehicle that cannot be started and moved under its own power, or is not currently licensed.

INTEGRATED CANNABIS MICROBUSINESS: A person that is authorized to conduct one or more of the following:

- (1) production of cannabis at a single licensed premises provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sales and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment;
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

KITCHEN: An area of a dwelling where there is a sink and a significant cooking appliance, including but not limited to a range, oven, or stove. The presence of a sink and a hot plate or microwave does not constitute a Kitchen.

LEGAL ACCESS: Access to the property, described in the plat or warranty deed for a specific lot or parcel as a private easement or public right-of-way.

LIGHTING, INDIRECT: Illumination that is reflected from the sign to the eyes of the viewer rather than

illumination emitted directly from the sign, such as neon signs.

LOT: Any parcel of land platted and placed on record in accordance with applicable laws and ordinances, described by metes and bounds, and having Legal access.

LOT AREA: The total square footage of the lot as described by the platted lot lines. It does not include any right-of-ways or easements. Also called "lot area."

LOT COVERAGE, IMPERVIOUS: Any structure, surface, or improvement that reduces and/or prevents absorption of storm water into the land.

LOT WIDTH: (See "Frontage")

MANUFACTURED HOUSING, GENERAL: A manufactured home that is a single-family dwelling 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 (42 U.S.C 5401 et seq.) and the Housing and Urban Development Zone Code II or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [60-14 NMSA 1978] and with the regulations made pursuant thereto relating to permanent foundations.

MANUFACTURED HOME, MULTI-SECTION (per Manufactured Housing and Zoning Act, Section 3-21A-3, NMSA 1978): A manufactured 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 and 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 (42 U.S.C 5401 et seq.) and the Housing and Urban Development Zone Code II or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [60-14 NMSA 1978] and with the regulations made pursuant thereto relating to permanent foundations.

MANUFACTURED HOME (GENERAL) AND MANUFACTURED HOME, SINGLE-SECTION (per Manufactured Housing Act, Section 60-14-2, NMSA 1978): A movable or portable housing structure over thirty-two 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 that 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. Does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. Includes any movable or portable housing structure over twelve feet in width and forty feet in length that is used for nonresidential purposes.

MAYOR: The Mayor of the Town of Bernalillo, New Mexico, or their duly authorized representative or agent.

MIXED USE DEVELOPMENT: A development containing a mix of residential and non-residential uses on the same site or in the same building. Mixed use developments shall only include uses already allowed in the property's zone.

MOBILE FOOD ESTABLISHMENT: A food establishment that is designed to be readily moveable, completely retains its mobility, and is equipped to serve food. Also called a “food truck.”

MOBILE HOME: A moveable or portable housing structure larger than 40 feet in body length, eight feet in width or 11 feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes but 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 II or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code. Mobile homes older than 30 years shall not be placed within the Town.

MOBILE HOME PARK: A parcel of land on which space is leased for occupancy by two or more mobile homes, and which contains facilities for the use of mobile home occupants. New mobile home parks are prohibited in the Town. Any mobile home parks which existed prior to May 2, 2001, shall be classified as a legal, nonconforming use.

MODULAR OR PREFABRICATED HOME: A factory-fabricated transportable building constructed to State standards and designed to be used by itself or to be incorporated with similar units at a building site into a modular structure on a permanent foundation; the term applies to major assemblies designed to be permanently affixed to real property in conformance with the local building code, and does not include prefabricated sub-elements such as panels, trusses, or plumbing trees which are to be incorporated into a structure at a building site.

NONCONFORMING LOT: Any lot which does not conform to the regulations of this Ordinance but that was legally platted on or prior to the effective date of which it does not conform. Nonconforming lots do not include any lot that, at the relevant time, did not conform to or was not exempt from the effective zoning regulations.

NONCONFORMING STRUCTURE: Any structure which does not conform to the regulations of this Ordinance but that lawfully existed on or prior to the effective date of which it does not conform. Nonconforming structures do not include any structure that, at the relevant time, did not conform to or was not exempt from the effective zoning regulations.

NONCONFORMING USE: The use of any land or structures which does not conform to the regulations of this Ordinance but that lawfully existed on or prior to the effective date of which it does not conform. Nonconforming uses do not include any use of any structure or lot that, at the relevant time, did not conform to or was not exempt from the effective zoning regulations.

OFFICE: A building designed for or used as the offices of professional, commercial, industrial, religious, public or semi-public persons or organizations.

OPEN LOT AREA: Lot area not coupled with buildings, structures, equipment, parking, vehicles, debris, etc.

OUTDOOR STORAGE. The placement of commercial vehicles, equipment, merchandise, inventory, materials or other items outside an enclosed building. Storage within an open carport and/or storage beneath a tarpaulin or similar cover outside an enclosed building shall be considered outdoor storage.

OVERLAY ZONE: A zone district placed over any other zone district such that special zoning requirements are imposed in addition to those of the underlying zone district. Development within the overlay district must conform to the requirements of both zoning districts or the more restrictive of the two.

PARK, PUBLIC: A tract of land owned by a branch of government and available to the general public for recreational purposes.

PARK, PRIVATE: A tract of land owned or controlled and used by private or semi-public persons, entities, or groups, for recreational purposes.

PARKING AREA, PRIVATE: An open or enclosed off-street area of land used for the parking of motor vehicles used by occupants including employees of a building to which such area is appurtenant.

PARKING SPACE: An area on a lot sufficient in size to store one automobile (not less than nine feet wide and 20 feet long) connected to a public street or alley by a driveway not less than 20 feet wide and so arranged as to permit ingress and egress of the automobile at all times without moving any other automobile.

PICKUP CAMPER: A structure designed to be mounted on a pickup or truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling for travel and recreation use.

PREMISES: Land together with any buildings or structures occupying it.

PROPERTY OWNER OF RECORD: The owner of a property according to Sandoval County Assessor records.

PUBLIC UTILITY: An office, pumping station, communication center, distribution or transfer facility, or other management or operational need for electricity, communication, gas, water, transportation, and sewerage, but exclusive of production or disposal plants, storage yard or supply base, unless otherwise provided for by this Ordinance.

RECREATIONAL VEHICLE: See definition for Travel Trailer.

RESTAURANT: A commercial establishment where food and beverages are prepared, served, and consumed primarily within the principal building.

RESTAURANT, DRIVE-THROUGH: An establishment in which food or drink is served to customers within automobiles outside of the confines of the building and where the consumption of such food or drink is intended to occur off the premises.

RIGHT-OF-WAY: An area dedicated to public use for pedestrian and/or vehicular movement, which may also accommodate public utilities.

ROADWAY: That portion of a public right-of-way or private way or thoroughfare which is primarily devoted to vehicular use. This definition shall not apply to private access driveways.

SCHOOL: A supervised program of instruction designed to educate a student in a particular place, manner

and subject area (NMSA 1978, Chapter 22, "Public School Code"), and furthermore may include public school, charter school, home school, professional school, trade school, art school, business school, dance school, college or similar.

SETBACK: The required distance between every building or structure and a boundary line of the lot upon which it is located. Setbacks shall consist of an open space, unoccupied and unobstructed by any part of a building or structure, except as otherwise provided in this Ordinance.

SETBACK, FRONT: The minimum allowable distance between a structure and the boundary line of the lot, upon which such structure is located, bordering on a Legal access. No more than one front setback shall be designated on corner lots or double frontage lots.

SETBACK, REAR: The minimum allowable distance between a structure and the boundary line of the lot, upon which such structure is located, which is opposite and most distant from a legal access. On double frontage lots, the rear setback shall be designated on the opposite side of the lot from the designated front setback.

SETBACK, SIDE: The minimum allowable distance between a structure and the boundary line of the lot, upon which such structure is located, which is not designated as the front or rear setback. On corner lots, a side setback shall be designated along the lot line bordering a roadway that is not designated as the front setback.

SEXUALLY ORIENTED BUSINESS: see Town of Bernalillo Ordinance 147, as amended from time to time.

SHIPPING CONTAINER: Also called a "Conex" or "Intermodal Freight Container". A container with strength suitable to withstand shipment, storage, and handling and designed to be moved from one mode of transport to another without unloading and reloading.

SHOPPING CENTER: A group of retail and other commercial establishments that is planned, constructed, and managed as a single property and where on-site parking is provided.

SIDEWALK: The portion of a road right-of-way paralleling and usually separated from the roadway, paved and designed for preferential or exclusive use by pedestrians.

SIGN: A structure or device designated or intended to convey information to the public in written or pictorial form.

SIGN AREA: The total area that will contain the entire sign excluding architectural embellishments and supports on neither of which there is displayed any advertising material nor any lighting.

SIGN, FREESTANDING: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or structure. Types of freestanding signs include pole/pylon and monument signs and flutter banners or feather flags when affixed to a permanent, ground mounted base.

SIGN, OFF-PREMISE: Any sign that directs attention to a business, commodity, or service sold, offered or existing elsewhere than upon the same lot where such sign is displayed.

SIGN, ON-PREMISE: Any sign that directs attention to a business, commodity, or service sold, offered or existing on the same lot where such sign is displayed.

SIGN, PERMANENT: Any sign permanently affixed with poured concrete or concrete, masonry or wood anchors, to the ground or wall.

SIGN, POLE/PYLON: A freestanding sign that is mounted on a pole or other support.

SIGN, MONUMENT: A freestanding sign attached to a permanent foundation or decorative base and not attached or dependent on support from any building, pole, posts or similar uprights.

SIGN, TEMPORARY: Any sign that is not permanently affixed to the ground or wall. Temporary signs may include banners, flutter banners/feather flags, streamers, sandwich board, A-frame, balloons, pennants, signs held by a person or persons, signs mounted to vehicles, portable signs and signs mounted in or on the ground with wire, wood or other material. If permanently affixed to the ground, flutter banners or feather flags may be considered a permanent sign.

SIGN, WALL: A sign flush to the exterior surface of a building, whether applied directly on the building or a signboard attached flush to the building.

STUDIO: The working space of a painter, sculptor, or other artist, limited to the production and sale of the works of said painter, sculptor, or other artist, and to one occupational employee.

STREET: A thoroughfare which has been dedicated to the public or which has been made public by right-of-use and which affords the principal means of access to abutting property.

STRUCTURE: Anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, but not including a tent or vehicle.

STRUCTURAL ALTERATION: Any change in the supporting members of the building, such as load bearing walls, or partitions, columns, beams, or girders, or any substantial change in the roof or exterior walls.

STRUCTURAL ALTERATION, SUBSTANTIAL: Any change to a building that increases its footprint on the lot.

SWIMMING POOL (PRIVATE): A swimming pool to which admission is limited by ownership or membership. Private swimming pools shall comply with current building codes.

SWIMMING POOL (PUBLIC): A swimming pool to which admission may be gained by the general public. All public swimming pools shall comply with State regulations. Public swimming pools shall comply with current building codes.

TELECOMMUNICATION, WIRELESS FACILITY: Any facility that transmits and/or receives signals by electromagnetic or optical means, including antennas, microwave dishes, or similar types of equipment, towers or similar structures supporting such equipment, and equipment buildings.

TINY HOUSE: A single-family dwelling unit that is 400 square feet or less in floor area excluding lofts. Tiny houses shall be ground-set, and shall comply with all applicable State regulations.

TOWN: Town of Bernalillo, New Mexico.

TOWN COUNCIL: The governing body of the Town of Bernalillo. The Town Council is also referred to as the Board of Trustees, or Trustees.

TOWNHOUSE: A single-family dwelling unit constructed in a group of two or more attached units, each on its own lot, in which each unit extends from foundation to roof and with a yard or public way on not less than two sides.

TRACT: A parcel of land or a group of contiguous parcels of land under one ownership.

TRAVEL TRAILER: A vehicular or portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, and not permanently connected to utilities.

TRUCK: A motor vehicle designed, used, or maintained primarily for the transportation of property.

TRUSTEES: (See "Town Council")

USABLE OPEN SPACE: Outdoor or unenclosed area on the ground, or on a roof, balcony, deck, porch, or terrace designed and accessible for outdoor recreation, but excluding parking facilities, driveways, utility or service areas.

VARIANCE: A discretionary waiver from a zoning requirement to grant a property owner reasonable use of their land.

VERTICALLY INTEGRATED CANNABIS ESTABLISHMENT: A person that is authorized to act as a cannabis courier, a cannabis manufacturer, a cannabis producer and/or a cannabis retailer.

ZERO LOT LINE DEVELOPMENT: A dwelling, whereby the main building is situated on a lot such that a building line or a common wall between attached dwelling units, is along a property line; and may include detached single-family dwellings and townhouses.

ZONE: (See "District")

ZONE MAP, OFFICIAL: A map showing all zone district boundaries and classifications within the city, as contained within the zoning code, which is available at the Town office.

ZONING INTERPRETATION: A formal, official interpretation of a regulation, definition, or requirement of the zoning code made by the zoning officer.

ZONING OFFICER: The Planning and Zoning Director of the Town of Bernalillo or other employee so designated by the Town Council.

SECTION 6. APPLICATION OF ZONING MAP.

- A. Official Zone Map: The boundaries of zone districts are shown on the Official Zone Map entitled "Town of Bernalillo Zoning Map," which is hereby adopted per the regulations set forth in this Ordinance. An interpretation may be required when the provisions of this Ordinance are not clear or when a use is proposed that is not listed. See Section 19 for interpretation process and review.
- B. Boundaries: Zoning boundaries indicated as approximately following right-of-way lines of streets, alleys, municipal limits, railroads, irrigation or drainage ways shall be construed as following such lines.
- C. Vacations: Zoning along frontage of a public right-of-way shall automatically extend to the center line upon vacation from public use of said right-of-way.
- D. Zone Change: An application for change of zone of unplatted land must be accomplished by a plat delineating the boundaries of each tract requested to be rezoned.
- E. Interpretation: Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered above, the Commission shall interpret the zone district boundaries.
- F. Annexation: Appropriate zoning for all lands annexed to the Town shall be designated by the Town Council following a review and recommendation made by the Commission. Zoning within annexed areas shall be consistent with development policies and processes of the Town; see Section 19.

SECTION 7. ESTABLISHMENT OF ZONE DISTRICTS.

The area within the zoning jurisdiction of the Town of Bernalillo is hereby divided into the following zone districts:

R-R RURAL RESIDENTIAL ZONE
R-1 SINGLE-FAMILY RESIDENTIAL ZONE
R-1A MIXED SINGLE-FAMILY RESIDENTIAL ZONE
R-2 MULTIPLE-FAMILY RESIDENTIAL ZONE
C-R COMMERCIAL RESIDENTIAL ZONE
C-1 COMMERCIAL ZONE
M-1 LIGHT INDUSTRIAL ZONE
S-U SPECIAL USE ZONE
PUD PLANNED UNIT DEVELOPMENT ZONE

SECTION 8. R-R RURAL RESIDENTIAL ZONE.

The purpose of this zone district is to provide for large lot and low-density residential uses that are conducive to a rural atmosphere. Limited agricultural activities are allowed.

A. Permissive Uses:

1. One single-family dwelling unit per lot, including mobile homes not more than 30 years old. Within 30 days of occupancy, each mobile home or manufactured home shall be skirted.
2. Accessory building or structure.
3. The raising of nursery products such as trees, shrubs, or ornamental flowers.
4. Storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked in the street for more than a 24-hour period.
5. Home occupation; see Section 18.
6. One carport, given the following provisions are met:
 - a. The owner must obtain a building permit for the carport prior to construction; and
 - b. The carport must be open on at least three sides; and
 - c. Drainage off of the carport shall not drain onto adjacent properties or alley.
 - d. Carports shall meet all setback requirements.
7. Temporary sign; see Section 21.
8. The following agricultural activities are allowed provided the lot has an area of at least one half acre:
 - a. Home occupation related to the raising of agricultural products and/or animals.
 - b. Temporary stands for display and sale of agricultural products may be erected, provided the number of stands is limited to one for each lot and that the size of the stand does not exceed 400 square feet.
 - c. Animals such as cattle, horses, pigs, sheep, goats, ducks and poultry provided that cattle or horses do not exceed one animal for each 10,000 Square feet of open lot area, one sheep or goat for each 4,000 square feet of open lot area, or equivalent combination. All livestock and poultry shall be kept in such a manner as not to constitute a nuisance through violation of the following regulations:
 - i. No offensive noise, odor or dust shall be produced.

ii. Areas devoted to livestock and poultry, including accessory buildings and structures, shall be constructed and maintained to discourage concentration and breeding of insects and pests.

iii. All animals shall be confined within owner's property boundaries.

iv. Areas devoted to feeding, housing, and shelter shall be a minimum of 25 feet from adjacent properties.

9. Cannabis Producer, provided the use is located on a single lot, tract or parcel of land that is a minimum of 1 acre in size and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

10. Cannabis Producer Microbusiness, provided the use is located on a single lot, tract or parcel of land that is a minimum of 1 acre in size and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

B. Conditional Uses (Requires Conditional Use Permit):

1. Churches, hospitals, schools, and religious and philanthropic institutions provided that such uses shall be located on sites of sufficient size to meet off-street parking requirements of this Ordinance and to provide a setback from all property lines equal to a distance of at least one foot for each foot of building height.

2. Nursery, kindergarten and other private or special schools where the open lot area is not less than 40 percent of total lot area. The area needed to meet front and side setback requirements from the property line is not to be considered as open area.

3. Kennel or Veterinary Hospital.

4. Use of a travel trailer or recreational vehicle as a temporary dwelling while the main dwelling is under construction for a period of time not to exceed one year. The applicant must have a current building permit during this time. An extension may be granted by the Zoning Officer upon review.

5. Park, open space, or public utilities.

6. The sale of nursery products raised on site so long as the lot is at least half an acre.

7. Home occupation; see Section 18.

8. Accessory dwelling unit.

C. Lot Requirements:

1. Area and width: Every lot must have an area of not less than 12,000 square feet and a width of

not less than 70 feet along the front yard setback line. This minimum lot area assumes the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply. Domestic wells must comply with State requirements.

2. Setback:

- a. Front: 20 feet;
- b. Side: 5 feet; 10 feet on the street side of corner lots;
- c. Rear: 10 feet.

D. Off-Street Parking: See Section 20.

E. Signs: See Section 21.

F. Height Restrictions: No structure shall exceed 35 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 9. R-1 SINGLE-FAMILY RESIDENTIAL ZONE.

This zone district permits a low density of population in which the principal land use is single-family dwellings.

A. Permissive Uses:

- 1. One single-family dwelling unit per lot, but not including mobile homes.
- 2. Accessory building or structure.
- 3. Non-commercial gardens, swimming pools, or tennis courts.
- 4. Storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked in the street for more than a 24-hour period.
- 5. Home occupation; see Section 18.
- 6. Up to seven hens, but no roosters, and as further regulated by the Town of Bernalillo Animal Control Ordinance, as amended from time to time, but that hens shall be kept in a secure enclosure or pen, a minimum of 10 feet from any property line.
- 7. Temporary sign; see Section 21.

8. One carport, given the following provisions are met:
 - a. The owner must obtain a building permit for the carport prior to construction; and
 - b. The carport must be open on at least three sides; and
 - c. Drainage off of the carport shall not drain onto adjacent properties or alley.
 - d. Carports shall meet all setback requirements.

B. Conditional Uses (Requires Conditional Use Permit):

1. Churches.
2. Hospitals or Clinics.
3. Schools.
4. Child or Adult Day Care Centers.
5. Use of a travel trailer or recreational vehicle as a temporary dwelling while the primary dwelling is under construction for a period of time not to exceed one year. The applicant must have a current building permit during this time. An extension may be granted by the Zoning Officer upon review.
6. Parks, open space, and public utilities.
7. Home occupation; see Section 18.
8. Accessory dwelling unit.

C. Lot Requirements:

1. Area and width: Every lot must have an area of not less than 6,000 square feet and a width of not less than 60 feet along the front setback line. This minimum lot area assumes that the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply. Domestic wells shall comply with State requirements.
2. Setback:
 - a. Front: 20 feet;
 - b. Side: 5 feet; 10 feet on the street side of corner lots;
 - c. Rear: 10 feet.

- D. Off-Street Parking: See Section 20.
- E. Signs: See Section 21.
- F. Height Restrictions: No structure shall exceed 35 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 10. R-1A MIXED SINGLE-FAMILY RESIDENTIAL ZONE.

This zone district provides for a mixture of single-family dwellings, including mobile homes, manufactured homes, and conventional housing units.

A. Permissive Uses:

1. One single-family dwelling unit per lot, including mobile homes not more than 30 years old. Within 30 days of occupancy each mobile or manufactured home shall be skirted.
2. Accessory building or structure.
3. Non-commercial gardens, swimming pools, tennis courts, or privately-operated clubhouse.
4. Storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked in the street for more than a 24-hour period.
5. Home occupation; see Section 18.
6. Up to seven hens, but no roosters, and as further regulated by the Town of Bernalillo Animal Control Ordinance, as amended from time to time, but that hens shall be kept in a secure enclosure or pen, a minimum of 10 feet from any property line.
7. Temporary sign; see Section 21.
8. One carport, given the following provisions are met:
 - a. The owner must obtain a building permit for the carport prior to construction; and
 - b. The carport must be open on at least three sides; and
 - c. Drainage off of the carport shall not drain onto adjacent properties or alley.
 - d. Carports shall meet all setback requirements.

B. Conditional Uses (Requires Conditional Use Permit).

1. Churches.
2. Hospitals or Clinics.
3. Schools.
4. Child or Adult Day Care Centers.
5. Parks, open space, and public utilities.
6. Use of a travel trailer or recreational vehicle as a temporary dwelling while the primary dwelling is under construction for a period of time not to exceed one year. The applicant must have a current building permit during this time. An extension may be granted by the Zoning Officer upon review.
7. Home occupation; see Section 18.
8. Accessory dwelling unit.

C. Lot Requirements:

1. Area and width: Every lot must have an area of not less than 6,000 square feet and a width of not less than 60 feet along the front setback line. This minimum lot area assumes that the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply.
2. Setback:
 - a. Front: 20 feet;
 - b. Side: 5 feet; 10 feet on the street side of corner lots;
 - c. Rear: 10 feet.

D. Off-Street Parking: See Section 20.

E. Signs: See Section 21.

F. Height Restrictions: No structure shall exceed 35 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 11. R-2 MULTIPLE-FAMILY RESIDENTIAL ZONE.

This zone district permits a more diverse mix of housing options, including single-family and multifamily dwelling units.

A. Permissive Uses:

1. One single-family dwelling unit per lot, but not including mobile homes.
2. Apartments. All apartments shall provide a minimum of 200 square feet of Usable OpenSpace per dwelling unit.
3. Townhouses, duplexes, or development utilizing building lines or common walls along property lines.
4. Accessory building or structure, but not to include structures for domestic livestock or fowl.
5. Non-commercial gardens, swimming pools, tennis courts, or clubhouse.
6. Storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked in the street for more than a 24-hour period.
7. Home occupation; see Section 18.
8. Bed and Breakfast.
9. Sign, on-premise. In conjunction with apartments:
 - a. One monument sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and not to exceed 10 feet in height nor 60 square feet of sign area per sign; OR
 - b. One pole/pylon sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and with a maximum height no higher from the ground than its distance to the nearest property line, but in no case shall it be higher than 17 feet from the ground, and not more than 60 square feet of sign area per sign; AND
 - c. One wall mounted sign per lot frontage, not to exceed 20 percent of the building wall area.
 - d. Temporary signs: See Section 21.
10. One carport, given the following provisions are met:
 - a. The owner must obtain a building permit for the carport prior to construction; and
 - b. The carport must be open on at least three sides; and
 - c. Drainage off of the carport shall not drain onto adjacent properties or alley.

d. Carports shall meet all setback requirements.

B. Conditional Uses (Requires Conditional Use Permit):

1. Churches.
2. Hospitals or Clinics.
3. Schools.
4. Child or Adult Day Care Centers.
5. Parks, open space, or public utilities.
6. Home occupation; see Section 18.

C. Lot Requirements:

1. Minimum lot areas and widths:

- a. The minimum lot area for single-family dwelling units shall be 6,000 square feet per dwelling unit, with a minimum width of 60 feet along the front setback line.
- b. The minimum lot area for townhouses and other zero lot line developments shall be 4,000 square feet, with a minimum width of 30 feet along the front setback line of each dwelling unit.
- c. The minimum lot area for apartments shall be sufficient to meet parking and usable open space requirements.
- d. These minimum lot areas assume that the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply.

2. Setback:

- a. Front: 20 feet;
- b. Side: 5 feet; 10 feet on the street side of corner lots;
- c. Rear: 10 feet.
- d. Zero lot line developments:
 - i. Front: 20 feet;
 - ii. Side: 10 feet between buildings, however the distribution may vary;

- iii. Rear: 10 feet.
 - e. Townhouse developments shall not exceed four attached dwelling units per structure, each divided by common walls and each having a separate entrance at ground level. Townhouse developments comprising groups of attached dwelling units shall maintain a separation of no less than 10 feet between structures.
- 3. Off-Street Parking: See Section 20.
 - 4. Signs: See Section 21.
 - 5. Height Restrictions: No structure shall exceed 35 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 12. C-R COMMERCIAL RESIDENTIAL ZONE.

This zone district permits single-family and multifamily dwellings as well as limited commercial activities.

A. Permissive Uses:

- 2. One single-family dwelling unit per lot, but not including mobile homes.
- 3. Apartments. All apartments shall provide a minimum of 200 square feet of Usable OpenSpace per dwelling unit.
- 4. Townhouses, duplexes, or development utilizing zero lot lines or common walls along property lines.
- 5. Accessory building or structure, but not to include structures for domestic livestock or fowl.
- 6. Non-commercial gardens, swimming pools, tennis courts, or clubhouse.
- 7. In conjunction with a residential use, storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked in the street for more than a 24-hour period.
- 8. Bed and Breakfast.
- 9. Professional and business offices under 10,000 square feet.
- 10. Retail or service shops under 10,000 square feet.
- 11. Home occupation; see Section 18.

12. Churches under 10,000 square feet.

13. Sign, on-premise.

- a. One monument sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and not to exceed 10 feet in height nor 60 square feet of sign area per sign; OR
- b. One pole/pylon sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and with a maximum height no higher from the ground than its distance to the nearest property line, but in no case shall it be higher than 17 feet from the ground, and not more than 60 square feet of sign area per sign; AND
- c. One wall mounted sign per lot frontage, not to exceed 20 percent of the building wall area; AND
- d. A maximum of 2 flutter banners or feather flags per premises, if affixed to a permanent, ground mounted base.
- e. Temporary signs: See Section 21.

14. One carport, given the following provisions are met:

- a. The owner must obtain a building permit for the carport prior to construction; and
- b. The carport must be open on at least three sides; and
- c. Drainage off of the carport shall not drain onto adjacent property or alley.
- d. Carports shall meet all setback requirements.

15. Cannabis Retailer, provided that:

- a. The use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center; and
- b. The building containing the use is under 10,000 square feet in size; and
- c. Cannabis product sales shall only occur during the hours of 7am – 12am (consistent with package sales for alcohol in NM).

16. Data Center, Micro.

B. Conditional Uses (Requires Conditional Use Permit):

1. Hospitals or Clinics.
2. Schools.

3. Child or Adult Day Care Centers.
4. Public parks, open space, or public utilities.
5. Accessory dwelling unit.
6. Eating and drinking establishments, excluding drive through restaurants or bars.
7. Mixed use development.
8. Home occupation; see Section 18.
9. Sign, off-premise. See Section 21.

C. Lot Requirements:

1. Minimum lot areas and widths:

- a. The minimum lot area for single-family dwelling units shall be 6,000 square feet per dwelling unit, with a minimum width of 60 feet along the front setback line.
- b. The minimum lot area for townhouses and other zero lot line developments shall be 4,000 square feet, with a minimum width of 30 feet along the front setback line of each dwelling unit.
- c. The minimum lot area for apartments shall be sufficient to meet parking and usable open space requirements.
- d. These minimum lot areas assume that the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply.
- e. No minimum lot area requirements for lots in non-residential use.

2. Setback:

- a. Front: 20 feet;
- b. Side: 5 feet; 10 feet on the street side of corner lots;
- c. Rear: 10 feet.

D. Off-Street Parking: See Section 20.

E. Signs: See Section 21.

F. Height Restrictions: No structure shall exceed 35 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The

stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 13. C-1 COMMERCIAL ZONE.

This zone district allows those commercial and business activities that serve the community on a day-to-day basis.

A. Permissive Uses:

1. One single-family dwelling unit per lot, but not including mobile homes.
2. Accessory buildings or structures, but not to include structures for domestic livestock or fowl.
3. Commercial and non-commercial gardens, swimming pools, tennis courts.
4. In conjunction with a residential use: Storage of a boat, camper, trailer, or other recreational vehicle as long as such boat, camper, trailer or recreational vehicle is not used as a dwelling or living quarters and is not connected to utilities. The boat, camper, trailer, or recreational vehicle shall not be stored within a front, rear, or side setback, and shall not be parked on a residential street for more than a 24-hour period.
5. Home occupation; see Section 18.
6. Bed and Breakfast.
7. Retail and service shops under 20,000 square feet.
8. Bakeries and confectioneries under 20,000 square feet.
9. Professional and business offices under 20,000 square feet.
10. Apartments. All apartments shall provide a minimum of 200 square feet of Usable OpenSpace per dwelling unit.
11. Churches.
12. Eating and drinking establishments, including drive-through restaurants and bars.
13. Child or Adult Day Care Centers.
14. Grocery markets and convenience food stores under 20,000 square feet.
15. Banks.
16. Theaters.
17. Research and development offices.

18. Hotels and Motels.
19. Gas stations for retail, not wholesale, consumption provided:
 - a. Lubricating, minor repairs, and associated activities are conducted within a completely enclosed building.
 - b. A solid masonry wall at least six feet high is erected between the activity and any abutting residential use or zone.
20. Temporary structures, enclosures, and equipment necessary for construction of a building and/or used for storage of equipment and/or material. Such structures, enclosures, or equipment must be removed after the specific construction project is completed and shall not remain on the premises for more than one month after completion. Temporary structures or enclosures used for seasonal purposes may be erected for a period of not more than 90 days and shall be removed within one week after the end of the season for which it was intended (e.g. Christmas trees, fireworks).
21. Self-storage and commercial storage parking lot for RVs, vehicles, or boats.
22. Automobile repair and service. With solid masonry wall at least six feet high shall be erected between the activity and any abutting residential use or zone.
23. Mobile food establishment.
24. Sign, on-premise.
 - a. One monument sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and not to exceed 17 feet in height nor 70 square feet of sign area per sign; OR
 - b. One pole/pylon sign per 250 feet of lot frontage, not to exceed 2 signs per premises, and with a maximum height no higher from the ground than its distance to the nearest property line, but in no case shall it be higher than 30 feet, and not more than 150 square feet of sign area per sign; AND
 - c. One wall mounted sign per lot frontage, not to exceed 20 percent of the building wall area; AND
 - d. A maximum of 2 flutter banners or feather flags per premises, if affixed to a permanent, ground mounted base.
 - e. Temporary signs: See Section 21.
25. Cannabis Producer, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
26. Cannabis Producer Microbusiness, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

27. Cannabis Retailer, provided that: the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center; and

a. The building containing the use is under 20,000 square feet in size; and

b. Cannabis product sales shall only occur during the hours of 7am – 12am (consistent with package sales for alcohol in NM).

28. Cannabis Testing Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

29. Cannabis Research Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

30. Data Center, Large.

31. Data Center, Micro.

32. Light Manufacturing, provided:

a. Uses may include coffee roasting, candle making, soap making, jewelry making, beer, wine and spirits brewing or distilling, metal or woodworking.

b. Building containing use is under 20,000 square feet in size.

c. Use is completely enclosed within building.

33. Shipping Container.

B. Conditional Uses (Requires Conditional Use Permit):

1. Hospitals or Clinics.

2. Schools.

3. Parks, open space, and public utilities.

4. New and used car sales.

5. Lumber yards and landscaping material sales and storage.

6. Amusement enterprise, provided all activities are indoor, such as auditoriums, billiard or pool hall, dance halls, theaters, skating rinks, bowling alleys and other indoor recreational uses.

7. Mixed use development.

8. Home occupation; see Section 18.

9. Sign, off-premise; see Section 21.

10. Outdoor Storage.

C. Lot Requirements:

1. Minimum lot areas and widths:

- a. The minimum lot area for single-family dwelling units shall be 6,000 square feet per dwelling unit, with a minimum width of 60 feet along the front setback line.
- b. The minimum lot area for townhouses and other zero lot line developments shall be 4,000 square feet, with a minimum width of 30 feet along the front setback line of each dwelling unit.
- c. The minimum lot area for apartments shall be sufficient to meet parking and usable open space requirements.
- d. The minimum lot area for mixed use developments shall be 6,000 square feet, with a minimum of 200 square feet of usable open space per dwelling unit.
- e. These minimum lot areas assume that the lot is serviced by community utilities. If on-site sewage treatment is used, then lot area required by the New Mexico Environment Department shall apply.
- f. No minimum lot area requirement for lots solely in non-residential use.

2. Setback:

- a. Every lot solely in residential use:
 - i. Front: 20 feet;
 - ii. Side: 5 feet; 10 feet on the street side of corner lots;
 - iii. Rear: 10 feet.
- b. Non-residential and mixed use development:
 - i. Front: 10 feet;
 - ii. Rear: 10 feet;
 - iii. Side: 10 feet on the street side of corner lots, or where the site abuts a lot in residential use or a residential zone, otherwise no requirements.

D. Off-Street Parking: See Section 20.

- E. Signs: See Section 21.
- F. Height Restrictions: No structure shall exceed 45 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 14. M-1 LIGHT INDUSTRIAL ZONE.

This zone district will permit heavy commercial and light manufacturing uses which do not endanger the health and safety of the community and which do not create offensive noise, vibration, smoke, dust, lint, odors, heat or glare.

A. Permissive Uses:

1. Wholesale merchandising or storage warehouses.
2. Manufacture or assembly of hardware accessories, ornamental iron products, electrical appliances and sheet metal products.
3. Manufacture or storage of food products, including beverage blending or bottling, bakery products, candy manufacture, dairy products and ice cream, fruit and vegetable processing and canning, packing and processing of meat and poultry products, distilling of beverages, but not slaughtering of poultry or animals.
4. Manufacture of boxes, crates, furniture, baskets, veneer, and other wood products of similar nature.
5. Churches.
6. Mobile food establishment.
7. Sign, on-premise.
 - a. One monument sign per lot frontage, not to exceed 10 feet in height nor 70 square feet of sign area; or pole/pylon sign per lot frontage, no higher from the ground than its distance to the nearest property line, but in no case higher than 30 feet and not more than 150 square feet of sign area; AND
 - b. One wall mounted sign per lot frontage, not to exceed 20 percent of the building wall area; AND
 - c. A maximum of 2 flutter banners or feather flags per premises, if affixed to a permanent, ground mounted base.
 - d. Temporary signs: See Section 21.
8. Cannabis Testing Laboratory, provided that the use is located a minimum of three-hundred feet

(300') from a school or child daycare center or adult daycare center.

9. Cannabis Research Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
10. Cannabis Manufacturer, provided that the use is within a completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
11. Cannabis Producer, provided that the use is within a completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
12. Cannabis Producer Microbusiness, provided that the use is completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
13. Data Center, Large.
14. Data Center, Micro.
15. Outdoor Storage.
16. Shipping Container.

B. Conditional Uses (Requires Conditional Use Permit):

1. Automobile dismantling yard, provided:
 - a. All activities are conducted in a completely enclosed building or are enclosed by a solid wall or fence at least six feet high.
 - b. Inoperative automobile bodies may be stacked to a height that does not exceed the height of the required wall.
2. Public utility use or structure necessary for the transmission of commodities or services of a utility company.
3. Truck repair or servicing.
4. One dwelling unit for a watchman or caretaker on the premises provided such dwelling unit is used only for residential purposes. The dwelling unit may be site built, modular or a multi-section or single-section manufactured home but may not be a recreational vehicle or mobile home.
5. Any other similar use which is compatible with the general nature and intent of this zone district.

6. Sign, off-premise; see Section 21.

C. Lot Requirements:

1. Minimum lot area and width: No requirements

2. Setback:

a. Front: 25 feet;

b. Side: 10 feet;

c. Rear: 15 feet.

d. Wherever the site abuts a lot in residential use or in a residential zone, there shall be a setback of no less than 25 feet on the side abutting the residential use.

3. Where an M-1 zoned lot abuts a lot in residential use or in a residential zone, there shall be a solid screening wall of at least six feet in height.

D. Off-Street Parking: See Section 20.

E. Signs: See Section 21.

F. Height restrictions: No structure shall exceed 45 feet except for flagpoles, antennas, spires, or other accessory objects usually placed above the roof level and not intended for human occupancy. The stockpiling of any material or equipment shall not exceed the height of an allowed fence as regulated in Section 22 of this Ordinance.

SECTION 15. SPECIAL USE ZONE.

This zone district permits only those uses which require special consideration because of their unusual nature, frequency of occurrence, effect on surrounding property or other similar reason. This zone is not intended for residential uses. Additional conditions may be imposed by the Town Council.

A. Procedures:

1. An application for a change to S-U zoning must declare the proposed use and must be accompanied by a development plan showing the location and dimensions of the property and all structures to be located thereon.

2. An ordinance implementing a change on the Zoning Map to S-U must designate the specific use permitted, and any building permits are to be issued only for the specific use and in accordance with the approved development plan. The specific use and ordinance number must be recorded on the Official Zone Map.

3. A certified copy of the approved development plan shall be provided to the applicant, and a

second copy shall be kept on file by the Zoning Officer.

4. In the event that a use authorized in an S-U Zone is permanently discontinued, by not having a business registration for 12 consecutive months, or does not develop, the S-U Zone may be cancelled and removed from the Zoning Map under the provisions for an amendment to this Ordinance. That area delineated by such discontinued S-U Zone shall be rezoned to the prevailing surrounding zone as determined by Town Council following recommendation by the Commission.

B. Special Uses. Uses including but not limited to the following:

1. Amusement park.
2. Cemetery, including columbarium mausoleum, or crematory, provided the site contains at least five acres.
3. Correction, detention, or penal institution.
4. Golf course.
5. Off-Premise parking lots, subject to the following requirements:
 - a. The parking area shall provide spaces for at least ten vehicles.
 - b. A parking layout plan showing arrangement and dimensions of all parking stalls.
 - c. Adequate controlled access to a street, alley, or public thoroughfare.
 - d. Paving, or surface of equivalent performance characteristics.
 - e. Parking spaces shall be appropriately marked to indicate the location of the spaces.
 - f. The parking area shall be properly drained to prevent runoff of storm water to abutting properties.
 - g. The parking area shall be screened by a solid wall or fence at least six feet high on sides which abut lots in residential use or residentially zoned.
 - h. Adequate security lighting shall be installed but must be shielded to prevent light from shining directly onto residential lots.
 - i. The parking area shall be in compliance with the off-street parking regulations of this Ordinance.
6. Office park or business center over 20,000 square feet, subject to the following conditions and requirements:
 - a. A group of two or more office or business establishments that are planned, developed,

owned, or managed as a unit, related in location, size, and type of establishments to the service area of the unit. The site of the office park or business center may include contiguous properties.

- b. An applicant must submit a general development plan for the office park or business center site, including: drawings showing the approximate location and use of proposed buildings; exterior lighting control; general design of pedestrian and vehicular entrance, exit, and circulation; and the general design of parking, loading, and traffic handling facilities and methods.
 - c. There shall be a maximum floor area of 40,000 square feet in any one building.
 - d. Maximum building height shall be 45 feet or four stories, whichever is less.
 - e. Setback from property lines in relation to any building on site shall be equal to or greater than the height of the building.
 - f. A minimum of 10 percent of the office park or business center site shall be landscaped. This 10 percent may include setback areas and off-street parking lot landscaping.
7. Public facilities, including Town, State, County, and Federal facilities.
8. Public park.
9. Retail and service shopping centers over 20,000 square feet, provided shopping center development applications are submitted in accordance with the following regulations:
- a. An applicant must submit a general development plan for the shopping center and shopping center site, including: drawings showing the approximate location and use of proposed buildings; exterior lighting control; general design of pedestrian and vehicular entrance, exit, and circulation; and the general design of parking, loading, and traffic handling facilities and methods.
 - b. Access to the shopping center is limited to approaches designed according to accepted traffic engineering practice and laid out so as to be an integral part of the parking area and loading facilities. Pick-up points must be designed so that vehicles stopped for this purpose do not create congestion on an abutting public thoroughfare. No loading or unloading is to be conducted on a public thoroughfare.
 - c. Upon approval, the applicant is responsible for payment of cost for any necessary street channelization improvements to shelter vehicular turning movements in the shopping center site. These responsibilities must be outlined and agreed upon between the applicant and the Town at the time of approval of the general development plan.
 - d. A minimum of 10 percent of the site shall be landscaped. This 10 percent may include setback areas and off-street parking lot landscaping.
10. Travel trailer or recreational vehicle campground intended for overnight or short-term use.

Maximum length of occupancy shall be 30 days and no individually metered utilities may be provided. Facilities shall not be in conflict with the regulations established by the New Mexico Environment Department and the New Mexico Office of the State Engineer concerning water and sewage treatment facilities. Travel trailer courts or recreational vehicle campgrounds are subject to the following regulations:

- a. The minimum park size shall be two acres.
 - b. The site shall be graded, drained, and free of rubbish and litter.
 - c. The site shall have a wall, fence or planted area six feet in height that screens the site from adjoining areas.
 - d. An annual business license shall be obtained from the Town before any travel trailer or recreational vehicle campground may be operated.
 - e. No travel trailer or recreational vehicle shall be located within 15 feet of any other. Any travel trailer or recreational vehicle shall be at least 25 feet from the right-of-way line of any street and at least 15 feet from any property line of the court or campground.
11. University or college.
 12. Retail and service shops over 20,000 square feet.
 13. Bakeries and confectioneries over 20,000 square feet.
 14. Professional and business offices over 20,000 square feet.
 15. Grocery markets and convenience food stores over 20,000 square feet.
 16. Signs: As approved by the Commission.
 17. Vertically Integrated Cannabis Establishment, provided the uses are located on a single lot, tract or parcel of land and further provided that the uses are located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.
 18. Integrated Cannabis Microbusiness, provided the uses are located on a single lot, tract or parcel of land and further provided that the uses are located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

SECTION 16. PLANNED UNIT DEVELOPMENT (PUD) ZONE.

The PUD Zone is intended to accommodate master planned developments. This may include a mix of commercial uses, residential and non-residential uses, a range of residential densities, and allows for more innovative and efficient layout and design of such projects than would be possible through strict application of other zoning districts.

- A. Allowable land uses and signage include only those already allowed in other Town zoning districts.

- B. Minimum Lot Area: Five acres.
- C. Plan Approval Requirements: See Section 19.
- D. Signs: As approved by the Commission.

SECTION 17. MAINSTREET OVERLAY ZONE. [Revised 4-11-2005, Ord. No. 202 and 8-26-19, Ord. No. 310]

The purpose of this Overlay Zone is to promote and protect a special character and human scale of development along South Camino del Pueblo which is designated as the Town of Bernalillo's MainStreet corridor. To the extent possible, historical and cultural elements of the MainStreet corridor shall be preserved and enhanced.

A. General Provisions:

1. **Boundaries:** The boundaries and properties of the MainStreet Overlay Zone shall be delineated on the Town of Bernalillo Zoning Map. As a minimum, all land which has frontage along South Camino del Pueblo between the U.S. Highway 550 (formally N.M. Highway 44) intersection and the Avenida Bernalillo intersection shall be included in the MainStreet Overlay Zone.
2. **Overlay Zone Requirements:** The MainStreet Overlay Zone shall be administered as an additional zoning district with special requirements, superimposed over existing zoning districts. Any development within the MainStreet Overlay Zone must conform to the requirements of both zoning districts, or the more restrictive of the two districts.
3. **Restoration of Nonconforming Uses:** If a nonconforming use existing at the time of adoption of this Section is damaged or destroyed to any extent, and by any means other than the willful act of the property owner, then the nonconforming use may be fully repaired and/or restored to its pre-damaged condition. Otherwise, restoration shall be in conformance with Section 23.C.2 of this Ordinance.
4. **Design Requirements, Statement of Character:** Bernalillo MainStreet, Camino del Pueblo, is the gathering place of the community. Important civic functions and public festivals, as well as daily business activities, occur along this street. Most of the buildings stand close to the street with a pedestrian walkway for frontage. The local residents prefer a small-town atmosphere of low profile, human scale structures facing the street. Park-and-walk is the typical means of access to MainStreet establishments. Street side landscaping and pedestrian amenities are desirable. Development in the MainStreet corridor should reflect the historical tradition, local culture, and individuality in the Town.
5. **Design Guidelines:** The Town of Bernalillo *MainStreet Design Guidelines* is provided as a supplemental document adopted by reference to this Ordinance. The *MainStreet Design Guidelines* is available upon request from the Zoning Officer. For purposes of administering the MainStreet Overlay Zone, the following elements are included in the *MainStreet Design Guidelines* with special requirements and regulations pertaining to future development:

- a. Setback requirements,
 - b. Building massing,
 - c. Building heights,
 - d. Parking requirements,
 - e. Accessory structures,
 - f. Walls and fences,
 - g. Street side and parking lot landscaping,
 - h. Porches, portales, and awnings,
 - i. Building materials,
 - j. Doors, windows and other openings on street face walls,
 - k. Architectural features of buildings,
 - l. Installation of security bars, and
 - m. Sign requirements.
6. Prohibited Activities: In order to maintain the special character of the MainStreet corridor, and to avoid development that would detract from that special character, the following activities are prohibited:
- a. Storage sheds or self-storage mini-warehouses, and
 - b. Mobile and manufactured homes, including sales, rental, service, repair and storage.

B. Review Process:

- 1. All new development, redevelopment, demolition, or substantial change in appearance to property within the MainStreet Overlay Zone shall be carried out in accordance with a site development plan approved by the Commission. A substantial change in appearance includes exterior alterations, renovations, and additions to existing structures. Demolition refers to the complete removal of a structure located within the MainStreet Overlay Zone. A site development plan shall include:
 - a. A plot plan showing the location, dimensions, height, and setback of all existing and any proposed buildings and structures on the development site,
 - b. Location and description of all existing and any proposed signs, exterior lighting, parking and

- loading areas, traffic access and circulation routes, and pedestrian areas,
- c. Preliminary sketch drawings or elevations of any proposed buildings or structures, and
 - d. A landscaping plan showing location and type of street trees and other proposed and existing vegetation, with irrigation systems, on the development site.
2. Plan Review and Approval: In order for the Commission to review and grant approval for any new development, redevelopment, demolition, or substantial change in appearance to properties within the MainStreet Overlay Zone, the following process applies:
- a. All owners of property within the MainStreet Overlay Zone shall be notified by letter from the Zoning Officer that their properties are subject to the requirements and regulations of the MainStreet Overlay Zone. A copy of the relevant sections of this Ordinance and the ***MainStreet Design Guidelines*** shall be attached to the letter of notification.
 - b. Any building permit applications submitted to the Zoning Officer for proposed development within the MainStreet Overlay Zone shall be reviewed to determine compliance with the requirements of this Section. The building permit application must be accompanied by a site development plan as prescribed in this Section.
 - c. Any improvements which do not require a building permit but which result in a substantial change of appearance or demolition to properties within the MainStreet Overlay Zone shall be made in accordance with the requirements of this Section. A written or graphic description of the proposed improvement project or demolition must be submitted to the Zoning Officer prior to the start of any on-site activity. The Zoning Officer shall have the discretion to require or not require a site development plan if necessary to determine compliance with this Section.
 - d. Ordinary maintenance and repair where the purpose of the work is to correct deterioration to the structure and restore it to its condition prior to deterioration will not require a site development plan.
 - e. Demolition shall only be permitted if it is determined by the Commission that the property is incapable of producing a reasonable economic return under current conditions and that no means of preserving the structure has been found.
 - f. Review and approval of any new development, redevelopment, demolition, or substantial change in appearance to properties within the MainStreet Overlay Zone shall be conducted by the Commission, and shall be made to determine compliance with the intent and provisions of the MainStreet Overlay Zone.
 - g. Within 30 days after receiving the site development plan or written description of a proposed improvement or demolition, the Commission shall approve or disapprove the proposed project, and shall transmit a written report of the review and decision to the property owner. Appeal of any decision by the Commission shall be made to the Town Council in accordance with the provisions established by this Ordinance.

SECTION 18. HOME OCCUPATIONS.

- A. Permissive Use: Home occupations that do not generate noticeable external impacts. This type of home occupation is allowed to occur if:
1. The business has a current business registration.
 2. The business is clearly incidental and secondary to the use of the premises for a dwelling. There shall be no exterior display (including signage), no exterior storage of materials, no nuisances emitted from the premises and no other exterior indication of the home occupation or variation from the residential character of the main building.
 3. The home occupation shall not be open to the public (clients, customers, patients, patrons, or similar individuals or groups).
 4. Only members of the residing family are employed.
 5. Not more than 25 percent of the floor area is devoted to the home occupation, nor more than 600 square feet of accessory building.
 6. There shall be no signage associated with the home occupation.
- B. Conditional Use: Home occupations such as massage therapy or counseling services, where clients will visit the property and limited signage and up to one employee may be necessary for the business. Businesses exceeding these limits need to relocate the activity to a commercially zoned property or secure a Special Use Permit to operate from the site is required. The following limitations have been established for home occupations requiring conditional use approval to ensure that the “business component” taking place on the site remains less intense than the primary residential activities:
1. The business has a current business registration.
 2. The business is clearly incidental and secondary to the use of the premises for a dwelling.
 3. Not more than 25 percent of the floor area is devoted to the home occupation, nor more than 600 square feet of accessory building.
 4. All clients must be on a by-appointment-only schedule.
 5. Up to a single, additional employee to work on the site.
 6. Signs: One sign, one square foot maximum area.

SECTION 19. PROCESS, APPLICATION AND APPROVALS.

- A. General. For purposes of this Ordinance, no building or structure shall be erected or building footprint altered upon any premises within the Town of Bernalillo without being reviewed and approved through the formal processes outlined in this section. All applications presented at the Commission or Town Council shall be properly noticed per the Open Meetings Act [10-15 NMSA 1978].

- B. Building Permits. No building or structures shall be erected, improvements constructed, nor mobile or manufactured home moved upon any premises within the area regulated by this Ordinance without prior approval of the Building Inspector, Zoning Officer, the Commission, or Town Council, as appropriate. Building permit applications and plans shall be submitted to the Building Inspector for review before applying for a building permit. The application must be accompanied by the applicable filing fee, payable to the Town of Bernalillo. The Zoning Officer shall determine if a variance, zone change, or conditional use permit is required, and if so, will notify the applicant of the appropriate application to file. If no variance, conditional use permit, or zone change is required, the Building Inspector will review the building permit application and plans and render a decision within 30 days.

- C. Final Approvals.
 - 1. Administrative Review. The Zoning Officer shall review and make a final decision (approval or denial) on the following applications:
 - a. Permitted Use.
 - b. Home Occupation Permit, when allowed as a Permissive Use.
 - c. Certificate of Nonconformance.
 - d. Zoning Interpretation.

 - 2. Commission. The Commission shall make the final decision (to approve, deny or approve with condition(s)) for the following applications:
 - a. Conditional Use Permit.
 - b. Variance.
 - c. Demolitions within the MainStreet Overlay Zone.
 - d. Appeal of Zoning Officer Decision.

 - 3. Town Council. The Commission shall review and make a recommendation to Town Council for the uses listed below. Town Council will then make the final decision (to approve, approve with conditions, deny, or table to a specified future date) for the following applications:
 - a. Zone change (map amendment), including Special Use and PUD.

- b. Zone text amendment.
 - c. Annexation.
 - d. Appeal of Commission decision.
 - e. Appeal of Town Council decision is to State District Court.
- D. Certificate of Nonconformance. A Certificate of Nonconformance is issued for lots, structures or land uses legally existing at the time of the adoption of this Ordinance that may not meet the current ordinance requirements. The purpose of these certificates is to establish the legality of a nonconformity so it may continue to exist legally.
1. Process, Town-Initiated. The Zoning Officer may initiate a Certificate of Nonconformance by notifying the property owner with a request to apply for a Certificate of Nonconformance. The property owner has 60 days from the date of notification to apply for the Certificate, using the prescribed forms available at the Town office. When initiated by the Town, there shall be no filing fee associated with the application.
 2. Process, Property/Business Owner-Initiated. A property/business owner may initiate their own request for a Certificate of Nonconformance by submitting a filing fee and applying to the Town on prescribed forms available at the Town office. The Zoning Officer may grant or deny the Certificate based on legal status prior to this Ordinance's enactment.
 3. A legal nonconformity can be proven with documentation such as the following:
 - a. Address, legal description and/or tax identification number; and
 - b. Site plan, to scale, showing all structures on the property; and
 - c. Proof that the nonconformity was legal when initially established and that the nonconformity was not discontinued or abandoned for more than 12 consecutive months. Examples of proof may include:
 - i. Copies of building permits
 - ii. Copies of utility bills
 - iii. Dated photographs
 - iv. Tax assessor's information
 - v. Annual business registrations since date of nonconformance
 4. Although the Town shall assist in determining nonconforming status, the burden of proof is on the property/business owner to establish that a nonconformity was legal when established, and in the case of a nonconforming use, continued legally, with no disruption of the nonconformity for more than 12 months, until the current date.

5. Nonconforming structures, lots, parcels or tracts of land are not affected by changes in ownership, tenancy or management.

E. Process and Plan Requirements: Conditional Uses and Variances.

1. Application. Any request for a change on the applicant's property requiring a Conditional Use Permit or a variance shall be submitted with filing fee to the Zoning Officer on the prescribed application form, available at the Town office. When a project is within the MainStreet Overlay Zone, the applicant shall be given a copy of the MainStreet Overlay District Design Guidelines booklet.
 - a. Applications for Conditional Use Permits shall be accompanied by a written description and site development plan, and shall include the following information:
 - i. Property boundaries
 - ii. Setbacks
 - iii. Proposed use
 - iv. Design (color, signage, fencing)
 - b. If a property with a Conditional Use Permit changes ownership, the new owner shall apply to the Town for a new Conditional Use Permit. Otherwise, the use may continue under that permit without reapplying, as per the permit (if there is an expiration date).
 - c. In considering an application for a Conditional Use Permit, the Commission shall not grant any Conditional Use Permit unless satisfactory provisions and arrangements have been made concerning the following, where applicable:
 - i. Adequate ingress and egress to property and proposed structures thereon, with particular reference to automobile and pedestrian safety and convenience, traffic flow and control, and access in case of fire, flood, or catastrophe; and
 - ii. Off-street parking and loading areas where required, and particular attention to refuse and service areas; and
 - iii. Public and private utilities, with reference to soil limitations, locations, availability, and compatibility; and
 - iv. The economic, noise, glare, or odor effects of the conditional use on adjoining properties; and
 - v. General compatibility with adjacent properties and other properties in the district.
 - vi. Conditional Use Permits issued in accordance with this Ordinance shall be considered permanent, with the following exceptions:
 - For any conditional uses that have an exceptional tendency, because of their nature or character, to create an adverse impact on neighboring properties, the Commission may limit the term of the permit to a specified length of time after which the permit shall expire and may be renewed. An application for renewal of the Conditional Use Permit may be submitted and processed in the same manner as the original

- application.
 - Where there has been a significant change in the physical extent, operations, or character of a permitted conditional use, the Commission may require a renewal of the original Conditional Use Permit. Significant change shall be determined by the Commission, based on a scheduled review of the Conditional Use Permit.”
 - 2. Notification. Completed applications will be scheduled for the next Commission hearing. Notice of the public hearing shall be mailed by certified mail to the property owner of record, return receipt requested, to the property owners within 100 feet of the proposed project no less than 15 days prior to the hearing, pursuant to State Statute notification requirements.
 - 3. Public Hearing. At the hearing, the Commission will either approve, approve with conditions, deny, or table the application until a specified future date.
- F. Variance. A variance is a discretionary waiver from the zoning requirements to grant the property owner reasonable use of their land. The Commission may approve a deviation from the numerical requirements of this Ordinance (i.e. setback or height requirements) where the applicant demonstrates:
1. A physical hardship unique to the property (i.e. topographical constraints or lot configuration resulting in reduced development flexibility); and
 2. These circumstances are not generally found within the locality or neighborhood concerned; and
 3. The hardship is not self-imposed; and
 4. The project is not contrary to the public interest or safety; and
 5. The spirit of the Zoning Ordinance is observed and substantial justice done; and
 6. The variance is to the minimum extent necessary to allow the owner reasonable use of the land.
 7. Financial gain or loss shall not be the determining factor in deciding a variance.
- G. Process and Plan Requirements: Zone change, text amendment. The Town Council may amend any of the regulations, zones or zone boundaries established by this Ordinance.
1. Application: Any request for an amendment to this Ordinance or to the Official Zone Map shall be submitted with filing fee to the Zoning Officer on a prescribed application form available at the Town office. An application may be initiated by the Town acting on behalf of the community at large. The Zoning Officer shall transmit the application and any supplementary information to the Commission for review at the next available meeting pursuant to State Statute notification requirements.
 2. Notification: Whenever a zone change is proposed, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the property owner of record within 100 feet of

the area proposed to be changed by zoning regulation. Whenever a text amendment is proposed, notice of the public hearing shall be posted per the Open Meetings Act requirements [10-15 NMSA 1978].

3. Public Hearing: At the hearing, the Commission shall prepare and transmit a recommendation in writing to the Town Council to approve, approve with conditions, or deny the application. Upon receipt of the written recommendations of the Commission, the application shall be scheduled for a regular Town Council hearing within 90 days in which to make its decision. The Town Council shall conduct the public hearing, at which all interested parties and citizens shall have an opportunity to be heard.
4. Decision: The Town Council shall make its decision to approve, approve with conditions, deny, table the application to a specified future date, or remand the application back to the Commission for additional review and recommendation prior to a final decision by the Town Council.
5. Upon approval of a zone map amendment by ordinance, the Official Zone Map will be updated accordingly.
6. No action shall be taken by the applicant (i.e. obtaining a building permit) until after the appeal period has passed.

H. Interpretation Request.

1. The applicant shall complete an Interpretation Application which shall include all required documentation and information.
2. Review Procedures:
 - a. The Zoning Officer shall have responsibility for providing interpretations of this Ordinance upon the request of any member of the public, the Commission or staff. Such requests shall be in writing and the Zoning Officer shall provide his or her interpretation, in writing, within 14 days of the request.
 - b. The Zoning Officer shall maintain records of all written interpretations to ensure consistency and to provide guidance in the implementation of this Ordinance in the future. Such records shall be public and available for public inspection.
 - c. The Zoning Officer's interpretation may be appealed to the Commission.
3. Criteria:
 - a. Uses that are not listed in this Ordinance shall be placed in the most similar category, or the category with the most similar impacts on nearby streets and properties.
 - b. When evaluating a provision of this Zoning Ordinance as to its meaning or application, the intent of the Town's Comprehensive Plan, or other master plan, and other sections of this Ordinance shall be applied.

- c. Interpretations shall not reduce protection to the public, but may provide greater flexibility in meeting the objectives of this Ordinance.
 - d. Interpretations shall protect the public health, safety, and welfare of the nearby residents and property and the Town as a whole.
- I. Annexation. The purpose of an annexation is to designate property outside the Town limits as being within the Town limits, thereafter. Annexations can be used to maintain a unified urban area and to promote orderly growth utilizing Town services. A plan identifying the purpose for which the property is intended to be used, and an initial zoning request are required for all annexation requests. Annexation and zone changes associated with the annexation shall be done concurrently.
- 1. Any request for an annexation shall follow the applicable process detailed in the State Statutes. There are three methods of annexation permitted by New Mexico State Statute:
 - a. Arbitration [§3-7-5 to §3-7-10 NMSA 1978].
 - b. Boundary Commission (§3-7-11 to §3-7-16 NMSA 1978).
 - c. Petition [§3-7-17 NMSA 1978].
- J. Appeals. Any person aggrieved by an administrative decision, a decision of the Commission, or the Town Council in carrying out the provisions of this Ordinance may appeal such decision. Administrative decisions may be appealed to the Commission; Commission decisions may be appealed to the Town Council; and Town Council decisions may be appealed to State District Court.
- 1. Criteria for Appeal:
 - a. An error was made in the presentation of the facts; or
 - b. The decision was arbitrary or capricious; or
 - c. The decision was not supported by the evidence in the matter.
 - 2. Application. Any appeal following a decision made by the Zoning Officer or the Commission shall be made in writing on prescribed forms available at the Town office with the applicable filing fee and submitted to the Zoning Officer. The Town Council shall only consider appeals submitted within 30 days after the decision, which is the subject of the appeal.
 - 3. Public Hearing.
 - a. At the hearing, the Commission or Town Council shall issue its decision on the appeal. Notification of the time and place of the public Hearing shall be provided per the Open Meetings Act requirements (10-15-1 to 10-15-4 NMSA 1978).
 - b. Stay of Proceedings. An appeal shall stay all proceedings in the action unless the Zoning Officer certifies that a stay will cause imminent peril to life or property.

- c. Decision. A majority vote of the members of the Commission or Town Council is required to reverse, change, or affirm the previous decision.
- d. State District Court. Appeal of a Town Council decision shall be made to the State District Court. Appeals must be filed within 30 days after the decision, which is subject to the appeal.

K. Sunset Clause.

- 1. Special Use Zone: An approved Special Use Zone change may be voided by the Town for either of the following reasons:
 - a. Either the developer or other evidence indicates that significant changes have been made to the approved plan; or
 - b. A building permit has not been obtained within one year following the date of approval of the site development plan.
 - c. If an approved site development plan becomes void, the Conditional Use Permit for the site shall be terminated, if applicable.
 - d. The use or uses have been permanently discontinued, by not having a Town business registration for 12 consecutive months.
- 2. Planned Unit Development Plans:
 - a. Concept Plan. Approval of a PUD Concept Plan and zoning change that is not followed by a PUD Final Plan or subdivision plat within one year of the Town Council approval date shall become null and void. Prior to expiration of the Concept Plan, the applicant may request an extension from the Town Council. If an extension is not granted, the Zoning Officer shall initiate action to rezone the property to the original zoning classification.
 - b. Final PUD Plan. The right to develop in accordance with an approved final PUD plan shall lapse and be of no further effect if development as shown on the approved Final Plan is not completed within five years of the approval date. If approval lapses, the Zoning Officer may initiate action to rezone the property to the original zoning classification.

L. Planned Unit Development Application and Approvals Process.

- 1. Submittal requirements. Every applicant shall complete a Planned Unit Development (PUD) Application which shall include all required documentation and information.
- 2. Review Procedures. A PUD is approved in two steps. The first step involves review and approval of a zone change application to the PUD Zone with an accompanying Concept Plan. The second step involves review and approval of a Final PUD Plan for the development, and subdivision, in accordance with the Town's Subdivision Regulations, if necessary. Applications for subdivision approval may be filed simultaneously with the PUD Zone change application; however,

preliminary subdivision approval is contingent upon approval of the PUD Zone designation.

- a. Sketch Plan and Pre-Application Meeting. Applicants are required to attend a preapplication meeting and to present a Sketch Plan of the proposed PUD, in a format established by the Zoning Officer. The Zoning Officer and other Town staff will meet with the applicant, review the Sketch Plan and discuss the goals and policies of the Town's Comprehensive Plan, the requirements of the Zoning and Subdivision Ordinances and any other matters that will assist the applicant in preparing the PUD Concept Plan.
 - b. Concept Plan and PUD Rezoning. A Concept Plan is a generalized land use and development plan for the area proposed to be included within a PUD Zone District and the surrounding area. It is required as a means of allowing early review of a proposed PUD before substantial planning work has been undertaken and before substantial expenses have been incurred. A Concept Plan must be processed and approved concurrently with a rezoning application to a PUD Zone. A Concept Plan must cover all of the land area to be included in the PUD and identify the type, total amount, and location of all development to occur within the PUD; a proposed plan for pedestrian and vehicular circulation within and leading to the PUD; a proposed plan for landscaping within and adjacent to the PUD; and identification of all utilities, easements, public areas including schools, parks and open space, and private facilities and services.
 - c. The Concept Plan and the PUD zone change applications, along with the required fees, shall be submitted to the Zoning Officer.
 - d. The Zoning Officer shall review the Concept Plan and PUD Zone change applications, along with written comments provided by staff, and prepare a Staff Report to the Commission.
 - e. The Commission shall review the application and make a recommendation for the Town Council to approve, approve with conditions, or deny the application, based on the criteria below.
 - f. After receiving the recommendation of the Commission, the Town Council shall hold a public hearing on the proposed Concept Plan and PUD Zone change applications. At the close of the public hearing, the Town Council shall approve, approve with conditions or deny the zone change and PUD Concept Plan, based on the criteria provided below. The decision of the Town Council shall be accompanied by written findings.
- M. Final PUD Plans. Final PUD Plan approval shall be required before the issuance of any permit for construction within the PUD Zone.
1. Applications for Final PUD Plan approval shall be submitted to the Zoning Officer.
 2. The Zoning Officer shall review the application to determine whether the application meets all of the applicable requirements of this Zoning Ordinance; the approved Concept Plan, including any conditions imposed by the Town Council, and the PUD regulations of this section and prepare a Staff Report with their determination.
 3. The Commission shall conduct a review of the Final PUD plans and shall approve the Final PUD plan if it meets all of the applicable requirements of this Ordinance, the approved Concept Plan

and the PUD regulations. The decision of the Commission shall be accompanied by written findings.

4. Criteria:

- a. PUD Zone changes and concept plans may be approved by the Town Council and final plans may be approved by the Commission only if the following criteria are met:
- b. The proposed Concept Plan is consistent with the Town's Comprehensive Plan, other current master plans, this Ordinance and other applicable codes and ordinances.
- c. The Concept Plan is necessary to address a unique situation or represents a substantial benefit to the Town, compared to what could have been accomplished through strict application of otherwise applicable zone district standards.
- d. The proposal is not significantly different from surrounding land uses in terms of density, intensity and impact, and it mitigates any potential adverse impacts to the maximum extent practical.
- e. The facilities and services (e.g. sewage and waste disposal, domestic and irrigation water, gas, electricity, police and fire protection, roads and transportation, and schools, as applicable) will be available to serve the subject project while maintaining adequate levels of service to existing development.
- f. The same development could not be accomplished through the use of other techniques, such as zone change to a non-PUD District.
- g. The proposal contains significant public amenities such as, but not limited to, open space, civic places, additional landscaping, or recreational trails.

N. Final Documentation:

1. All conditions of approval shall be documented in the final concept plan and in the official notice of decision.
2. Prior to the issuance of a building permit for any building or structure in a PUD, proof of filing of the final subdivision plat, if applicable, with the County Clerk must be provided.

SECTION 20. OFF-STREET PARKING REQUIREMENTS.

A. Requirements: Parking shall be provided on site per the regulations of this Ordinance. Existing buildings or structures must provide such parking only to the extent ground space is available. Parking may be located on any portion of the parcel but shall not obstruct public right-of-way.

B. Required Minimum Parking Spaces:

1. Single-family dwelling: two parking spaces per dwelling unit.

2. Accessory dwelling unit: one, provided on site.
3. Apartments: two spaces per unit.
4. Hotel, motel or assisted living facility: one space for each unit, one space for each two employees, and appropriate space for any accessory use, such as a restaurant.
5. Hospital, clinic or convalescent or nursing home: one space for each two beds and one space for each employee.
6. Medical or dental office: five spaces for each doctor.
7. Places of public assembly, including churches, community centers, auditoriums, theaters, gymnasiums, arenas, and mortuaries: one space for each four seats.
8. Club, lodge or fraternal organization: one space for each 150 square feet of gross floor area.
9. Dance hall, skating rink: one space for each 100 square feet of gross floor area.
10. Office, professional, retail businesses, and public buildings: one space for each 250 square feet of gross floor area.
11. Restaurant, bar: one space for each four seats.
12. Bowling alley: two spaces per lane.
13. Industrial, manufacturing, and wholesale establishments: one space for each two employees on the largest shift.
14. Shopping centers: five spaces per 1000 square feet of gross floor area.
15. Mixed uses: For mixed uses or multiple uses sharing a parking lot, the total requirements for off-street parking spaces shall be the sum of the required parking for each use. This can be reduced by 20 percent if the applicant can reasonably show that the various uses on the site have different peak hours of operation.
16. Data Centers: One space for each employee on shift.

C. Design Standards:

1. All facilities must provide appropriate access to a private easement or public thoroughfare.
2. Required off-street parking areas for new or re-developed multi-family, commercial and industrial uses must be paved with asphalt, concrete or an engineered permeable paving product.

3. All driveways shall be of sufficient width to permit access into spaces, but in no case less than 20 feet wide.
4. Each parking space shall consist of an area of not less than nine feet in width by 20 feet in length exclusive of driveway area.
5. On any multifamily or non-residential premises, sufficient spaces shall be set aside for the handicapped or physically disabled and shall comply with the following standards:

Total number of parking spaces provided in parking facility (per facility)	Column A: Minimum number of accessible parking spaces (car and van)	Minimum number of van-accessible parking spaces (one of six accessible spaces)
One to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
500 to 1,000	Two percent of total parking provided in each lot or structure	1/6 of Column A
1,001 and over	20 plus one for each 100 over 1,000	1/6 of Column A

- D. Off-Street Loading Requirements: Any structures built or which undergoes substantial structural alteration after the effective date of this Ordinance and which receive or distribute bulk materials by motor vehicle shall provide and maintain sufficient off-street loading space. Off-street loading space shall be at least 50 feet long and 12 feet wide, and shall not be located on designated parking spaces or in the public right-of-way. If Adjacent to a residentially zoned property there must be a solid screening wall of at least six feet in height.
- E. Inoperable vehicles not parked within a building must be removed within 25 days upon notification by the Zoning Officer.
- F. Vehicles must be parked within property boundary or in front of the property in the right-of-way, unless marked for no parking. Vehicles shall not block access to a property. Vehicles shall not be parked in any way that obstructs a sidewalk or crosswalk.

SECTION 21. GENERAL SIGN REGULATIONS.

A. General Sign Regulations. All signs and premises within the Town shall comply with the following:

1. No sign shall be erected unless it conforms to the zone in which it is located and a permit for the sign is obtained from the Town, as required.
2. Signs shall not be located in the public right-of-way or on public property. If a sign is so located, it shall be considered forfeited to the public and subject to confiscation and disposal. Off-premise signs that have received a Conditional Use Permit are exempt from this regulation.
3. All off-premise signs require a Conditional Use Permit and are subject to the following criteria:
 - a. Off-premise signs shall not be permitted on private property.
 - b. Off-premise signs must be found to be necessary for wayfinding and direction to a business, which is not located on a State highway or primary thoroughfare, and that is otherwise not easily found.
 - c. Off-premise signs shall only be approved if the location, dimensions and design of such sign and sign structure are approved by the Commission. Any approved sign and/or sign structure shall be designed to accommodate multiple wayfinding signs, in compliance with Section 21. Signs not in compliance, posing a safety hazard, or otherwise a nuisance, shall be removed by the Town.
 - d. A fee shall be charged by the Town for the use of public property.
4. All signs shall comply with the Night Sky Protection Act [§74-12-1 to §74-12-11 NMSA 1978].
5. Temporary Signs.
 - a. Temporary signs on property zoned R-2 (and containing apartments), C-R, C-1 or M-1, must have approval from the property owner. The number of temporary signs in any of these zones is limited to two at any given time and the size of each sign is limited to thirty-two square feet (32sf). A Temporary Sign Permit is required for each sign prior to placement of the sign. A Temporary Sign Permit may be issued for up to 90 consecutive days in a calendar year. Extensions may be approved by the Planning Commission. Consecutive permits for the same or similar temporary sign shall not be permitted.
 - b. Temporary signs on property zoned R-R, R-1, R-1A or R-2 (and not containing apartments), shall only be located on privately-owned property and must have approval from the property owner. The number of temporary signs is not limited but the size of each sign is limited to two-feet by two-feet (2'x2'). A Temporary Sign Permit is not required.
 - c. Temporary signs are prohibited in the public right-of-way, on public property or within a clear sight triangle. If a sign is so located, it shall be considered forfeited to the public and subject to confiscation and disposal.

6. Illumination. Signs may be unlit, internally illuminated, indirectly illuminated, or as otherwise specified in this Ordinance. Signs on commercially zoned properties may be illuminated. Signs on properties that are residentially zoned or in residential use shall not be illuminated.
7. Prohibited Signs:
 - a. Billboards. All new off-premise advertising signs, except as specified in Section 21-3 of this Ordinance, and billboards shall be prohibited from the Town. Any billboards which existed prior to May 2, 2001, shall be classified as nonconforming structures.
 - i. The nonconforming billboard shall be allowed to remain but may not be enlarged, expanded, modified or extended.
 - ii. A nonconforming billboard, when destroyed by natural causes, or determined to be structurally unsound by the Building Inspector, may be reconstructed within the following 30 days to the same dimensions which existed prior to its destruction.
 - iii. Whenever a nonconforming billboard has been discontinued for a period of 60 consecutive days, the Town shall cause the billboard to be removed at the expense of the property owner.
 - iv. Structural maintenance of nonconforming billboards shall be continued until the sign is removed by the property owner.
 - b. Signs which may be unsafe to the public while utilizing the roadway, such as:
 - i. Signs that mimic or interfere with official traffic signs or signals and/or public safety signs.
 - ii. Signs that are located in a clear sight triangle.
 - iii. Animated signs with visible moving, revolving or rotating parts, noise making, flashing or fluttering lights or other illuminating devices that have changing brightness or intensity of color.

SECTION 22. FENCES, LIGHTING AND LANDSCAPING REQUIREMENTS.

A. Fences shall be located in accordance with the following rules:

1. No fence with a height of more than three feet above the street level shall be placed or maintained in a designated triangular space, the "clear sight triangle", at the road or street corner on a corner lot. Such triangular space shall be bounded by the corner property lines and a diagonal line connecting points that are 30 feet in distance from the intersecting point of the two streets.
2. Except as provided in this Section, fences located within the front setback may be equal to or less than six feet in height, where the lower four feet may be solid and the upper two feet shall be see-through material such as wrought iron, chain link, vinyl posts or other similar material. Where not located within the front setback, fences may be six feet in height and constructed of any material

designed for fencing.

3. Any fence over six feet in height will require an approval for a variance, and a building permit, as prescribed by this Ordinance, from the Commission.
4. All fences and walls require a permit prior to construction.
5. Concertina Wire, Razor Wire and broken glass topped walls are not be permitted within the Town.

B. Lighting shall be located in accordance with the following rules:

1. On-site lighting shall not exceed 24' in height as measured from ground level to top of fixture.
2. Fixtures shall be fully shielded and shall be compliant with the State of NM Night Sky Protection Act (74-12-1 to 74-12-10 NMSA 1978).
3. Low energy use or solar lighting is preferred, where feasible.

C. Landscaping shall be required for all new commercial development or re-development, in accordance with the following rules:

1. A minimum of 10% of undeveloped land area shall be landscaped and maintained; and
2. Low water use, drought tolerant plants, trees and vegetation shall be utilized; and
3. Drip or sub-surface irrigation shall be utilized.

SECTION 23. NONCONFORMING USES, LOTS AND STRUCTURES.

A. Nonconforming Lots. A nonconforming lot may be developed, provided that the development complies with setback and height requirements of that zone.

B. Nonconforming Uses. A nonconforming use may continue to exist, without expansion, until discontinued for one year or until the property is sold.

C. Nonconforming Structures.

1. A nonconforming structure may be continued and the structure repaired, altered or expanded, in accordance with the provisions of this Ordinance, provided that the repair, alteration or expansion does not:

- a. Result in an additional structural nonconformity; and

- b. Increase the degree of the existing nonconformity of all or part of such structure.

2. A nonconforming structure that is damaged or otherwise destroyed, up to 50 percent of the structure, may be rebuilt, within 6 months, in the same building footprint. A building permit is required. If the structure is destroyed more than 50 percent, any construction shall comply with the current ordinance requirements.

D. Certificates of Nonconformance. Legally nonconforming lots, uses, or structures shall be issued a Certificate of Nonconformance, if requested by the property owner.

- E. Work in Progress: To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building in which actual and lawful construction had begun prior to the effective date or adoption or amendment of this Ordinance and upon which construction has been diligently carried on.

SECTION 24. ADMINISTRATION.

A. Enforcement:

1. Administrative Official: A Zoning Officer shall administer the provisions of this Ordinance. The Zoning Officer may also serve in some other capacity as an employee or appointed official of the Town.
2. Inspection: The Zoning Officer has the authority to conduct inspection of buildings, structures, and the use of land to determine compliance with this Ordinance. This provision does not grant right of entry without due process if necessary. The Zoning Officer shall provide for on-site inspections and other relevant information which may be requested by the Town Council or Commission as necessary to carry out the purpose of this Ordinance.
3. Administrative Review: The Commission must review an administrative action of the Zoning Officer when it is alleged that there is an error in a determination made by the Zoning Officer, and may reverse, affirm, or modify the administrative action.
4. Information and Records: The Zoning Officer shall maintain an office to supply the public with information concerning this Ordinance and shall maintain the official zoning map in an updated form. A "Zoning Action File" shall be maintained and shall contain records of the following:
 - a. Conditional Use Permits;
 - b. Variances allowed under this Ordinance;
 - c. Application for Amendments;
 - d. Certificates of Nonconformance;
 - e. Zoning Appeals;
 - f. Building Permit Applications;
 - g. Zoning Violations.

B. Map or Ordinance Amendments:

1. Application: Proposed amendments to this Ordinance or the Zoning Map shall be submitted to Town Council through the Zoning Officer.

2. Review: Before taking action on a proposed amendment, Town Council shall refer the proposal to the Commission which shall study the proposal and submit its recommendations to Town Council within 30 days after receipt thereof.
3. Public Hearing: The Commission shall hold a public hearing to review any proposed amendment to this Ordinance in accordance with Section 3-21-6, New Mexico Statutes Annotated, 1978.
4. Decision: The Town Council shall consider the recommendations of the Commission and make a final determination at their regularly scheduled public meeting.

C. Appeals:

1. Application: Any aggrieved person or persons affected by any action or decision made by the Zoning Officer or the Commission may appeal to the Town Council within 30 days after the date of the action or decision being appealed.
2. Notification: The Town Council shall give public notice of the time and place of hearing of the appeal and written notice to the appellant and members of the Commission at least 15 days before the date of the hearing.
3. Stay of Proceedings: An appeal results in a stay of all proceedings in the action unless the Zoning Officer certifies that a stay will cause imminent peril to life or property.
4. Decision: The Town Council may, by a majority vote of its members, reverse a decision, order, or requirement of the Zoning Officer or the Commission, or authorize the issuance of a variance or Conditional Use Permit when the permitted use is not contrary to the public interest and where the literal enforcement of this Ordinance will result in an unnecessary hardship and where the spirit of this Ordinance is observed.

SECTION 25. APPLICATION AND FILING FEES.

- A. Applications: A fee may be charged for any application. The fee schedule is available at the Town offices.
- B. Waiver: Filing fees will be waived for actions initiated by the Town.
- C. Refund: No filing fee will be refunded.

SECTION 26. ENFORCEMENT, VIOLATIONS, AND PENALTIES.

- A. Complaints Regarding Violations. Whenever the Zoning Officer, Code Enforcement Officer or Building Inspector receives a written, signed complaint alleging a violation of this Ordinance, they shall investigate the complaint, determine whatever action is warranted, and inform the complainant in writing of what actions have been or will be taken.

- B. **Persons Liable.** The owner, agent, lessee, tenant, occupant, architect, building contractor or any other person who commits, takes part in, assists, directs, creates, or maintains any violation of this Code within all or a portion of a structure or premises, may be held responsible for the violation, suffer the penalties and be subject to the remedies provided herein and Section 26, D of this Ordinance.
- C. **Procedures upon Discovery of Violation.**
 - 1. **Notice.** If the Town finds that any provision of this Ordinance is being violated, the Code Enforcement Officer shall send a written notice to the person or persons responsible for such violation, indicating the nature of the violation and ordering the action and timeline necessary to correct it. Additional written notices may be sent at the Code Enforcement Officer's discretion. However, depending on the severity of the violation, as determined by the Code Enforcement Officer, the initial written notice may be the final notice.
 - 2. **Notice of Pending Action.** The final written notice shall state what action the Code Enforcement Officer intends to take if the violation is not corrected.
 - 3. **Enforcement without Prior Notice.** Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this Ordinance or pose an imminent danger to the public health, safety or welfare, the Code Enforcement Officer may seek enforcement without prior written notice.
- D. **Maximum Penalties.** Any person violating any of the provisions of this Ordinance shall upon conviction be subject to a fine not exceeding \$500.00 or imprisonment for a period not exceeding 90 days, or both such fine and imprisonment, as authorized in Section 3-17-1.C NMSA 1978.
- E. **Separate Offense Daily.** Each day that a violation is committed or permitted to continue may be considered as a separate offense.
- F. **Issuance of Citation or Criminal Complaint.** The Code Enforcement Officer is authorized to file criminal complaints and/or issue citations for violations of this Ordinance pursuant to applicable laws, rules and regulations.
- G. **Permit Revocation.**
 - 1. **Criteria.** Any permit issued pursuant to this Ordinance may be revoked by the Town Council if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the Town. No person may continue to make use of land or structures in the manner authorized by any permit after such permit has been revoked in accordance with this Section.
 - 2. **Requirement for Notice and Hearing.** Before a permit may be revoked, the Town Council shall comply with all of the notice and hearing requirements of Sections 19, E, 2. The notice shall inform the permit recipient of the alleged grounds for the revocation.

- a. Presentation of Evidence. The burden of presenting evidence sufficient to authorize the Town Council to conclude that a permit should be revoked shall be upon the party advocating that position.
 - b. Findings of Fact. A motion to revoke a permit shall include a statement of the specific reasons or findings of fact that support the motion.
- H. Declaration of Nuisance Abatement. Any premise or structure constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Ordinance and/or any use of any land, premises or structure conducted, operated or maintained contrary to the provisions of this Ordinance shall be declared to be unlawful and a public nuisance and the Town Attorney shall, upon direction of the Town Council, immediately commence action or proceedings for the abatement and removal and enjoinder thereof in the manner provided by law and shall apply to such court as may have jurisdiction to grant such relief as will abate and remove such structure and restrain and enjoin any person, firm or corporation from building, erecting, maintaining, setting up or using any such premise or structure or using any property contrary to the provisions of this Code. (§3-18-5, §3-18- 17, §3-21-10 NMSA 1978).

SECTION 27. SEVERABILITY.

The provisions of this Ordinance shall be deemed to be severable, and should any section, paragraph or provision hereof be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

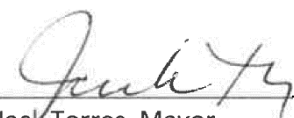
SECTION 28. REPEAL.

Ordinance No. 175 of the Town of Bernalillo is hereby repealed. The adoption of this Ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said Ordinance No. 175 if the violation is also a violation of the provisions of this Ordinance.

SECTION 29. EFFECTIVE DATE.

This ordinance shall become effective five days after adoption and publication, as required by law.

PASSED, APPROVED, AND SIGNED THIS 27th DAY OF JANUARY, 2020.



Jack Torres, Mayor



Ida Fierro, Town Clerk

ATTEST (seal):

AMENDMENTS/ATTACHMENTS:

1. **Ord. 321 Adopted 10/11/2021 – Cannabis Regulations**
2. **Ord. 334 Adopted 11/14/2022 - Biennial General Amendments**

ORDINANCE NO. 321

AN ORDINANCE ADOPTING AMENDMENTS TO THE TOWN OF BERNALILLO'S COMPREHENSIVE ZONING ORDINANCE (ORDINANCE NO. 310), IN ORDER TO INCORPORATE DEFINITIONS AND REGULATIONS FROM HOUSE BILL 2, THE "CANNABIS REGULATION ACT", ADOPTED BY THE STATE OF NEW MEXICO AND SIGNED INTO LAW ON APRIL 12, 2021.

WHEREAS, on April 12, 2021 House Bill 2, the "Cannabis Regulation Act", herein referred to as "the Act", was signed into law by the Governor of the State of New Mexico; and

WHEREAS, Section 2 of the Act provides definitions for Cannabis and Cannabis related products and uses; and

WHEREAS, Section 12 of the Act describes the extent to which Local Jurisdictions have authority to further regulate Cannabis and Cannabis related products and uses, specifically:

A local jurisdiction may:

1. Adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and
2. Allow for the smoking, vaporizing and ingesting of cannabis products within an indoor or outdoor cannabis consumption area if:
 - a. unless licensed pursuant to the Lynn and Erin Compassionate Use Act, access to the cannabis consumption area is restricted to persons twenty-one years of age and older; and
 - b. the cannabis establishment or integrated cannabis microbusiness is located at a minimum distance from a school or daycare center as determined by the local jurisdiction, but which minimum distance shall not be set at any more than three hundred feet from a school or daycare center that was in existence at the time the establishment or microbusiness was licensed.

A local jurisdiction shall not:

1. Prevent transportation of cannabis products on public roads by a licensee that transports cannabis products in compliance with the Cannabis Regulation Act;
2. Completely prohibit the operation of a licensee;
3. Prohibit or limit signage attached to or located on licensed premises that identifies the premises as a cannabis establishment;
4. Require a licensed premises or a cannabis consumption area to be any more than three hundred feet from a school or daycare center that was in existence at the time the cannabis establishment or integrated cannabis microbusiness was licensed;
5. Require an existing licensee at a licensed premises to relocate; or
6. Prohibit a person from producing homegrown cannabis as provided for in the Cannabis Regulation

Act.

WHEREAS, in recognition of, and in compliance with, the authority vested with local jurisdictions, several amendments to the Town's Comprehensive Zoning Ordinance (Ord. No. 310) are needed in order to provide the areas and degree to which Cannabis and Cannabis related products and uses may be produced, manufactured, tested, sold and consumed; and

WHEREAS, on September 7, 2021 the Planning and Zoning Commission held a duly noticed public hearing and recommended approval of the amendments to the Town Council.

NOW THEREFORE, IN ACCORDANCE WITH SECTIONS 19.G AND 24.B OF THE TOWN OF BERNALILLO'S COMPREHENSIVE ZONING ORDINANCE (ORD. NO. 310), BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNALILLO, NEW MEXICO, THAT ORDINANCE NO. 310 SHALL BE AMENDED AS FOLLOWS:

SECTION 5. DEFINITIONS. SHALL BE AMENDED TO INCLUDE THE FOLLOWING DEFINITIONS FROM HOUSE BILL 2:

CANNABIS: All parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include: (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.

CANNABIS CONSUMPTION AREA: An area where cannabis products may be served and consumed. Not permitted in Town.

CANNABIS ESTABLISHMENT: Means a cannabis testing laboratory, cannabis manufacturer, cannabis producer, cannabis retailer, cannabis research laboratory, vertically integrated cannabis establishment, cannabis producer microbusiness or an integrated cannabis microbusiness, as defined herein and in HB0002.

CANNABIS MANUFACTURER: A person that manufactures cannabis products, packages cannabis products, has cannabis products tested by a cannabis testing laboratory, or purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

CANNABIS PRODUCER: A person that cultivates cannabis plants, has unprocessed cannabis products tested by a cannabis testing laboratory, transports unprocessed cannabis products only to other cannabis establishments or sells cannabis products wholesale.

CANNABIS PRODUCER MICROBUSINESS: A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

CANNABIS PRODUCT: A product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

CANNABIS RESEARCH LABORATORY: A facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

CANNABIS RETAIL ESTABLISHMENT: A location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

CANNABIS TESTING LABORATORY: A person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

DAY CARE CENTER: A [+licensed and permitted+] facility where care, protection and supervision are provided for children on a regular schedule for a fee.

INTEGRATED CANNABIS MICROBUSINESS: A person that is authorized to conduct one or more of the following:

- (1) production of cannabis at a single licensed premises provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sales and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment;
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

SCHOOL: A supervised program of instruction designed to educate a student in a particular place, manner and subject area (NMSA 1978, Chapter 22, "Public School Code"), and furthermore may include public school, charter school, home school, professional school, trade school, art school, business school, dance school, college or similar.

VERTICALLY INTEGRATED CANNABIS ESTABLISHMENT: A person that is authorized to act as a cannabis courier, a cannabis manufacturer, a cannabis producer and/or a cannabis retailer.

SECTION 8. RURAL RESIDENTIAL ZONE. SHALL BE AMENDED AS FOLLOWS:

Section 8. A. Permissive Uses, add:

Cannabis Producer, provided the use is located on a single lot, tract or parcel of land that is a minimum of 1 acre in size and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Producer Microbusiness, provided the use is located on a single lot, tract or parcel of land that is a minimum of 1 acre in size and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

SECTION 12. C-R COMMERCIAL RESIDENTIAL ZONE. SHALL BE AMENDED AS FOLLOWS:

Section 12. A. Permissive Uses, add:

Cannabis Retailer, provided that:

- the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center; and
- the building containing the use is under 10,000 square feet in size; and
- cannabis product sales shall only occur during the hours of 7am – 12am (consistent with package sales for alcohol in NM).

SECTION 13. C-1 COMMERCIAL ZONE. SHALL BE AMENDED AS FOLLOWS:

Section 13. A. Permissive Uses, add:

Cannabis Producer, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Producer Microbusiness, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Retailer, provided that:

- the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center; and
- the building containing the use is under 20,000 square feet in size; and
- cannabis product sales shall only occur during the hours of 7am – 12am (consistent with package sales for alcohol in NM).

Cannabis Testing Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Research Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

SECTION 14. M-1 LIGHT INDUSTRIAL ZONE. SHALL BE AMENDED AS FOLLOWS:

Section 14.A. Permissive Uses, add:

Cannabis Testing Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Research Laboratory, provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Manufacturer, provided that the use is within a completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Producer, provided that the use is within a completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Cannabis Producer Microbusiness, provided that the use is completely enclosed building and further provided that the use is located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

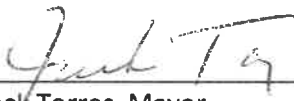
SECTION 15. SPECIAL USE ZONE. SHALL BE AMENDED AS FOLLOWS:

Section 15.B. Special Uses, add:

Vertically Integrated Cannabis Establishment, provided the uses are located on a single lot, tract or parcel of land and further provided that the uses are located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

Integrated Cannabis Microbusiness, provided the uses are located on a single lot, tract or parcel of land and further provided that the uses are located a minimum of three-hundred feet (300') from a school or child daycare center or adult daycare center.

PASSED, APPROVED, AND SIGNED THIS 11th DAY OF October, 2021.



Jack Torres, Mayor



Ida Fierro, Town Clerk

ATTEST:

ORDINANCE NO. 334

AN ORDINANCE AMENDING THE TOWN OF BERNALILLO'S COMPREHENSIVE ZONING ORDINANCE (ORDINANCE NO. 310), IN ORDER TO ADD, UPDATE AND/OR CLARIFY VARIOUS REGULATIONS AND DEFINITIONS.

WHEREAS, in Sections 19.G. and 24.B. of the Comprehensive Zoning Ordinance (Ord. 310), it provides a process for text amendments; and

WHEREAS, in Chapter 4 of the Town's Comprehensive Plan, it encourages periodic review and updates to Town plans and ordinances; and

WHEREAS, on September 6, 2022 the Planning and Zoning Commission held a duly noticed public hearing and recommended approval of several text amendments to the Town Council; and

WHEREAS, the text amendments were generally related to definition updates, conditional use permit requirements, site plan requirements, walls/fence height and types, temporary signs, outdoor storage and apartment parking; and

WHEREAS, on October 10, 2022, the text amendments were introduced to the Town Council and a date was set for the public hearing; and

WHEREAS on November 14, 2022, the Town Council held a duly noticed public hearing and approved the text amendments described herein.

NOW THEREFORE, IN ACCORDANCE WITH SECTIONS 19.G. AND 24.B OF THE TOWN OF BERNALILLO'S COMPREHENSIVE ZONING ORDINANCE (ORD. NO. 310), BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF BERNAILLO, NEW MEXICO, THAT ORDINANCE NO. 310 SHALL BE AMENDED AS REFLECTED IN EXHIBIT A, ATTACHED HERETO.

PASSED, APPROVED, AND SIGNED THIS 14TH DAY OF NOVEMBER, 2022.



Jack Torres, Mayor



Ida Fierro, Town Clerk

ATTEST:

TOWN OF BERNALILLO, NEW MEXICO ORDINANCE #310 - ZONING MAP

