

**FINAL
AGENDA**

FOR THE REGULAR MEETING OF THE CITY OF BELEN PLANNING AND ZONING COMMISSION, STATE OF NEW MEXICO, COUNTY OF VALENCIA TO BE HELD ON MONDAY THE 29th OF OCTOBER 2018 AT 6:00 PM IN THE COUNCIL CHAMBERS AT CITY HALL, 100 SOUTH MAIN STREET, BELEN, NEW MEXICO 87002.

ALL P & Z COMMISSION MEETINGS ARE VIDEO AND AUDIO RECORDED.

A COPY OF THE AGENDA MAY BE OBTAINED FROM THE OFFICE OF THE CITY OF BELEN PLANNING & ZONING DEPARTMENT.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGEANCE**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
Minutes of October 9, 2018
- 6. PUBLIC COMMENT 3 MINUTE PRESENTATIONS:** If more time is needed for presentation, please ask to be scheduled on the next agenda.
- 7. PUBLIC HEARING WITH POSSIBLE ACTION**
 - A. SWEARING IN OF PARTICIPANTS**
 - B. REQUEST FOR A CONDITIONAL USE for the purpose of keeping an 8ft high non-conforming fence at 919 S Main St.: HECTOR J HERNANDEZ. LEGAL DESCRIPTION:** Township 5 North, Range 2 East, Section 19, Tract D2, Land of Joe & Vickie Maestas, containing .63 acres.
 - C. REQUEST AN AMENDMENT TO THE MUNICIPAL CODE TITLE 15; Buildings & Construction, and adding Chapter 15.33; Erosion Control; Storm Drainage and Stormwater Quality: City of Belen**
- 8. DISCUSSION**
Comprehensive Plan
- 9. INFORMATIONAL ITEMS**
 - a. Communication from the Commission and Staff
- 10. ADJOURNMENT**

RESPECTFULLY SUBMITTED

/s/

Lisa R Miller, Planning & Zoning Administrator

cc: Mayor & City Council
News Bulletin

Belen Chamber of Commerce
Belen Recreation Center

Belen Public Library
Belen City Hall

City of Belen
100 South Main Street
Belen, NM 87002
(505) 864-8221

NOTICE OF PUBLIC HEARING

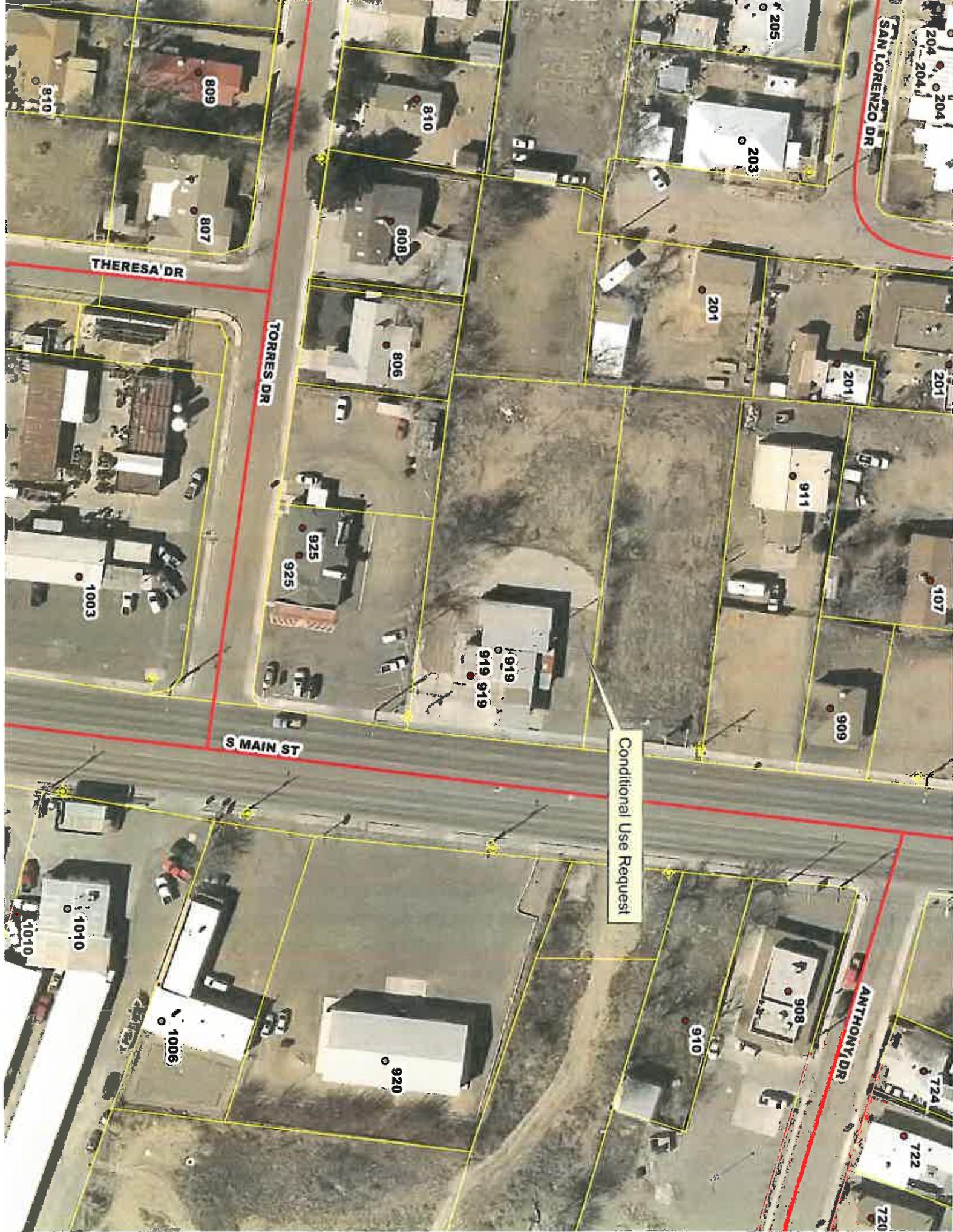
NOTICE IS HEREBY GIVEN to the public and all parties of interest that the Belen Planning and Zoning Commission will conduct a public hearing to hear a **REQUEST FOR CONDITIONAL USE** for the purpose of keeping an 8ft high non-conforming fence at 919 S Main St.: **Hector J Hernandez**.

LEGAL DESCRIPTION: Township 5 North, Range 2 East, Section 19, Tract D2, Land of Joe & Vickie Maestas, containing .63 ac., aka 919 S Main St., Belen NM 87002.

You are further notified that this public hearing will be held on **Monday, October 29, 2018 at 6:00 P.M.**, in the Council Chambers at City Hall, 100 South Main Street, Belen, New Mexico 87002. Any person having objections or wishing to be heard should make such protest to the Commission at the above stated date and time or write comments to the Planning and Zoning Commission, 100 South Main Street, Belen, New Mexico 87002.

Property owners within 100 feet excluding public right-of-way of said tract desiring to comment may write to the City of Belen Planning & Zoning Department at 100 South Main Street, Belen nm 87002

LEGAL NOTICE PUBLISHED: October 11, 2018



Conditional Use Request

THERESA DR

TORRES DR

S MAIN ST

SAN LORENZO DR

ANTHONY DR

809

810

808

806

925

925

919

919

205

203

201

201

201

911

107

909

1003

919

919

1010

1006

920

910

908

722

720

724



CITY OF BELEN PLANNING & ZONING LAND USE APPLICATION

Please check appropriate box.

Please Print in Ink Only or Type

ADMINISTRATIVE PERMIT	SUBDIVISION	ZONING
<input type="checkbox"/> Home Occupation	<input type="checkbox"/> Summary Plat-Replat	<input type="checkbox"/> Annexation
<input type="checkbox"/> Manufactured Home-MHP	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Appeal
<input type="checkbox"/> Manufactured Home	<input type="checkbox"/> Final Plat	<input checked="" type="checkbox"/> Conditional Use
<input type="checkbox"/> Sign Permit	<input type="checkbox"/> Vacation of Plat	<input checked="" type="checkbox"/> Variance
<input type="checkbox"/> Other	<input type="checkbox"/> Street Name	<input type="checkbox"/> Site Plan
		<input type="checkbox"/> Zone Map Amendment
		<input type="checkbox"/> Zoning Certification
		<input type="checkbox"/> Wireless Telecommunications Facility

Application must be complete. Please attach the appropriate checklist & Materials for the action you are requesting.

APPLICANT/AGENT INFORMATION

Applicant Name: <u>Hector J. Hernandez</u>		Phone: <u>505-916-9429</u>
Address: <u>919 S. Main St.</u>		Email: <u>hector5975@yahoo.com</u>
City: <u>Belen</u>	State: <u>NM.</u>	Zip Code: <u>87002</u>
Deed of Ownership Verification Provided:		Letter of Authorization Provided:

DESCRIPTION OF REQUEST: Please add additional sheet(s) if necessary.

Need to keep fence at 8ft. high due to a large amount of theft.

SITE INFORMATION: Please provide accurate legal description

Subdivision/Unit: <u>T5N, R2E, Sec. 19</u>	Block(s):	Lot(s): <u>TRACT 02</u>
Existing Zoning: <u>C-1</u>	Proposed Zoning:	No. of existing lots: <u>1</u>
No. of proposed Lots: <u>1</u>	Total area of site: <u>.63ac</u>	Length & width of lot(s):

ACKNOWLEDGEMENT

I hereby acknowledge that I have read this entire application and affirm that all information provided is correct. I agree to comply with the requirements of the City of Belen as outlined in all applicable laws, ordinances and regulations.

Print name: <u>Hector Hernandez</u>	Applicant: <u>OWNER</u>	Agent:
Signature: <u>Hector Hernandez</u>	Date: <u>9-19-18</u>	

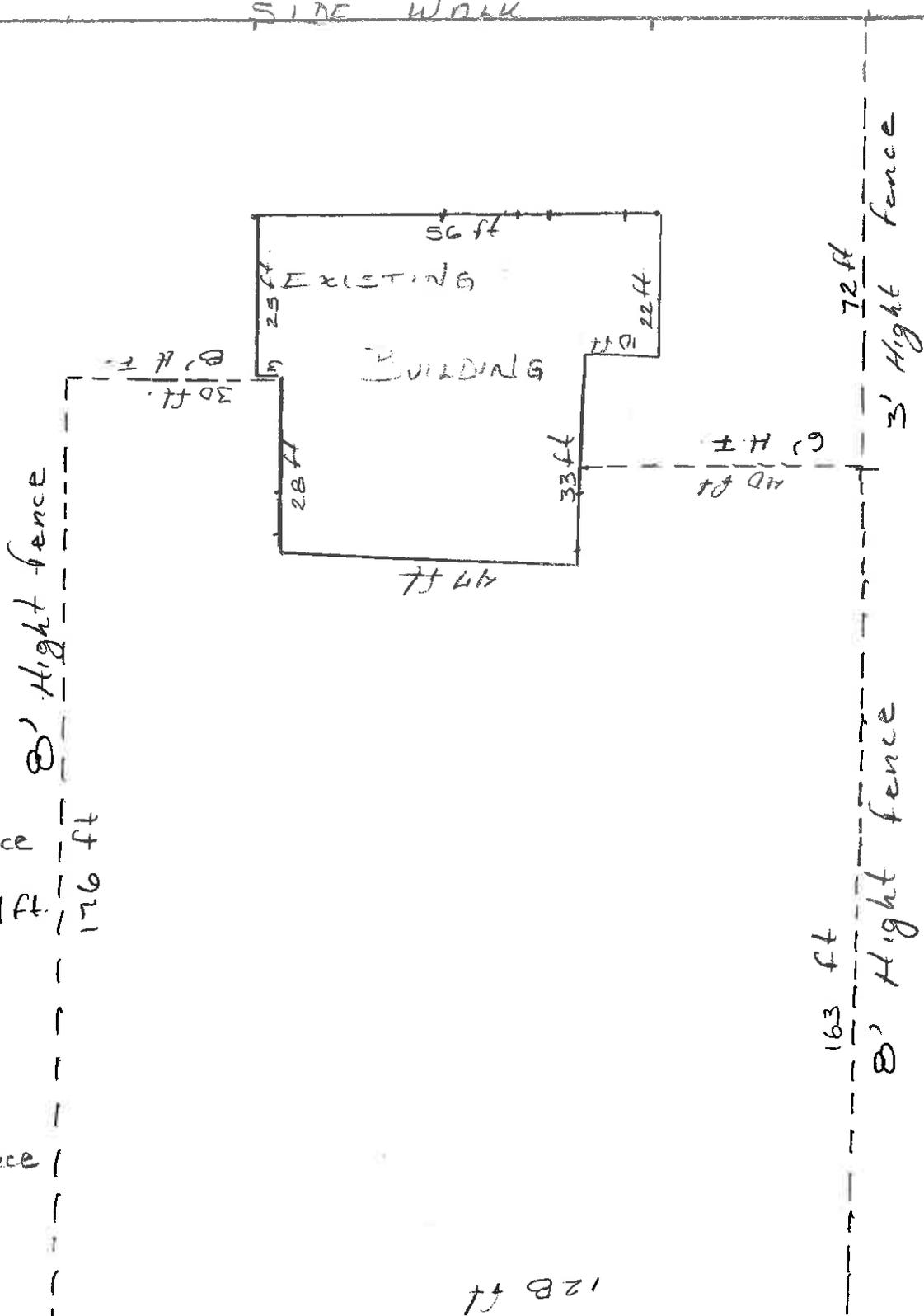
FOR OFFICIAL USE ONLY

PROJECT #	FEE(S)	RECEIPT #
	<u>\$150.00</u>	<u>12.006940</u>

Belen, NM 87002

ROAD

SIDE WALK



H.F = High fence

SCALE 1cm = 1ft

FENCE

Chain link fence

128 ft

OWNERS AFFIDAVIT

STATE OF NEW MEXICO)
COUNTY OF VALENCIA) SS
CITY OF BELEN)

We,
I Hector J. Hernandez
(Please PRINT name in full)

being duly sworn, depose and say that (I am) (we are) the owner(s) of property located at
919 S. Main St. Belen. NM., for which (I am) (we are)
(Address)

requesting a (Zone Change, Special Use Permit, Variance, Conditional Use, Annexation, Appeal, Replat, Lot Split, Etc.)

_____ through the City of Belen. Furthermore, (I) (we) hereby appoint
_____ of _____ as our agent to act in our
behalf on all matters pertaining to the processing of this application.

Hector J. Hernandez
Signed

37 Don Ramon rd
Address

Belen NM 87002

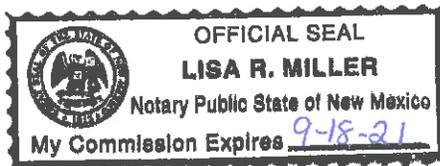
(505) 916-9429
Phone

Subscribed and sworn to before me this 19th day of September, 20 18.

Lisa R Miller
Notary

My Commission Expires:

9-18-21



Security Escrow

PO Box 25426

Albuquerque, NM 87125

Counter Receipt Statement

Account Number: 77000107816313
Seller Name: Melvin J or Josie Cole

Date Received: 9/18/2018

Hector J Hernandez or Yesika
Cordova
32 Don Ramon Road
Belen, NM 87002

Form of Payment: Check
Amount Received: \$958.00

Normal Payment Breakdown*

Current Account Status

P & I:	\$658.21	Previous Balance:	\$69,425.84
Payor Fees:	\$21.67	Account Paid To:	9/18/2018
Other:	\$0.00	Interest Paid To:	8/21/2018
Impounds:	\$277.53	Payment Applied To:	9/18/2018

This Receipt is subject to review upon final application of payment, and subject to change.

***Note: These values are normal payment values and they may change on actual posting.**



Case Report

Administrative

Case Report Number	I18-001016-001	Verification	
Subject	Stolen Vehicle	Verification Level	
Disposition	Active	Jurisdiction	South
Entered On	6/14/2018 2:30:53 PM	Grid	
Entered By	Hernandez, Braulio	Sector	
Reported On	6/14/2018	Map	
Reporting Officer	Hernandez, Braulio	Census/Geo Code	
Reporting Agency	BPD - Belen Police Department	Call Source	Dispatch
Report Type	Crime Report	Related Cases	
Assisted By		Means	
Occurred On (Date and Time)	Thursday 6/14/2018 6:00:00 AM	Other Means	
Or Between (Date and Time)	Thursday 6/14/2018 2:00:00 PM	Motives	
Location	919 S Main St	Other Motives	
CSZ	Belen, NM 87002	Vehicle Activity	
Location Name	Auto Shop	Direction Vehicle Traveling	
		Cross Street	
		Notified	

For Exceptional Clearances

Clearance Basis
 Exceptional Clearance Date

Offense

Offense	Unlawful taking of Motor Vehicle F	Crime Against	Property
Code Section		UCR Hierarchy	07
IBR Code		Location Type	Other/Unknown
IBR Group		Completed	Yes
		Hate/Bias	Unknown (Offenders)



Domestic Violence	Motivation Not Known)	Weapons
Premises Entered	No	Criminal Activity
Entry		Type Security
Using	Not Applicable	Tools

Offenders _____

Suspect Name: Unknown

Aliases

Alias

Alert(s)

Addresses

Address Type	Address	CSZ	County	Country
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Phones

Phone Type	Phone Number
------------	--------------

Emails

Email Address

Sex	Unknown	Teeth	
Race	Other	Build	
Ethnicity	Unknown	Height	
		Weight	
Age	20-30	Resident	Unknown
Eye Color		POB	
Hair Color		DLN	
Hair Style		DL State	
Hair Length		DL Country	
Facial Hair			
Complexion			

Scars, Marks and Tattoos

SMT	Location	Description
-----	----------	-------------



Attire
 Employer/School
 Employer Address
 Employer CSZ
 Occupation/Grade

MO
 Other MO
 Habitual Offender
 Status

Notes

Victims

Name: Hernandez, Wesley

Victim Type Individual
 Victim of 30-16D-1 - Unlawful taking of Motor Vehicle F

Aliases

Alias

Alerts

Addresses

Address Type	Address	CSZ	County	Country
	32 Don Ramon	Belen, NM 87002	Valencia	USA - United States of America

Phones

Phone Type	Phone Number
M - Mobile	(505) 916-9429

Emails

Email Address

Sex Male Eye Color Brown
 Race Hispanic Hair Color
 Ethnicity Facial Hair
 Complexion
 Age 18 Height 5' 7"



Weight	160	Attire
Resident	Unknown	Employer/School
POB		Employer Address
DLN	512439683	Employer CSZ
DL State	New Mexico	Occupation/Grade
DL Country	United States of America	Testify
		Injury

Offender Relationships

Offender	Relationship
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Circumstances
Just. Hom. Circ.

LEOKA Info

Type	Activity
Assignment	ORI-Other Jurisdiction

Notes

Witnesses _____

Other Entities _____

Properties _____

Property Other Motor Vehicle (Locally Stolen)

IBR Type	24	Count	1
UCR Type	24	Value	3,000.00
Description	Red Dodge Ram	Manufacturer	
Status	Stolen/Etc. (Bribed/Defrauded/Embezzled/Ransomed/ Etc.)	Model	
		Serial	



Disposition **Stolen**
Evidence
Tag

Alert(s)

Vehicle Information

Vehicle Type
Vehicle Year
Body Style

License Number
License Exp. Date
License State

Color Type	Color
------------	-------

Drug Information

Drug Type
Drug Quantity
Drug Measure

Notes

Property Windshield

IBR Type	38	Number\VI	
UCR Type	38	N	
Description	Ram Windshield	Color	
Status	Stolen/Etc. (Bribed/Defrauded/Embezzled/Ransomed/ Etc.)	Recovered Date	
Count	1	Owner	V - Hernandez, Wesley
Value	200.00	Disposition	Stolen
Manufacturer		Evidence Tag	
Model		Alert(s)	
Serial			

Vehicle Information



Vehicle Type
Vehicle Year
Body Style

License Number
License Exp. Date
License State

Color Type	Color
------------	-------

Drug Information

Drug Type
Drug Quantity
Drug Measure

Notes

Property Other Vehicle Part/Accessory

IBR Type	38	Serial Number\VIN	
UCR Type	38	Color	Aluminum
Description	Ram Ignition	Recovered Date	
Status	Destroyed/Damaged/Vandalized	Owner	V - Hernandez, Wesley
Count	1	Disposition	Damaged
Value	300.00	Evidence Tag	
Manufacturer		Alert(s)	
Model			

Vehicle Information

Vehicle Type
Vehicle Year
Body Style

License Number
License Exp. Date
License State

Color Type	Color
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Drug Information

Drug Type



Drug Quantity
Drug Measure

Notes

Property Spray Paint

IBR Type	16	Number/VI	
UCR Type	16	N	
Description	Three Paint Guns	Color	Silver
Status	Stolen/Etc. (Bribed/Defrauded/Embezzled/Ransomed/ Etc.)	Recovered Date	
Count	3	Owner	V - Hernandez, Wesley
Value	200.00	Disposition	Stolen
Manufacturer		Evidence Tag	
Model		Alert(s)	
Serial			

Vehicle Information

Vehicle Type	License Number
Vehicle Year	License Exp. Date
Body Style	License State

Color Type	Color
------------	-------

Drug Information

Drug Type
Drug Quantity
Drug Measure

Notes



Narrative

Narrative Subject **Stolen Vehicle**

Date Entered **6/14/2018**

Entered By **854 - Hernandez, Braulio**

Narrative:

On June 14, 2018 I Officer B. Hernandez was dispatched to 919 S. Main in reference to a Stolen Motor Vehicle. On arrival I made contact with Wesley Hernandez who stated his Red in color Dodge Ram bearing AZ plates (BDX4378) was taken this morning at approximately 0600 hours and 1400 hours. He stated his uncle had checked the building at approximately 0530 hours and everything was good at the time. He later returned and noticed items were missing from the inside of the shop. He stated that he noticed a red welder (SN: M3160301513), a Ram Windshield, and 3 vehicle paint guns were missing. He then walked outside and noticed that the Red Dodge had been taken from the back of the building where they had parked it the day before. I then attempted to locate shoe prints around the where the vehicle had been parked and was able to notice that the prints showed what to be Jordan shoes. During the investigation Wesley advised me that the ignition of a Black in Color Ram had the ignition damaged. The black Ram was parked just south of where the Red Ram was parked. I asked Wesley if knew of anyone who could have possibly taken the vehicle and items and he stated that he did not know of anyone. I advised Wesley to contact Police Immediately if he gathered any further information, he agreed. I also advised Wesley if he notices anything else missing to contact police so that it can be entered into the report. I advised Dispatch to put a BOLO (Be on the look out) for other agencies in the area. A Declaration of stolen property was signed for the welder and the vehicle which was later entered in N.C.I.C. as stolen by Central Dispatch. Nothing further to report at this time.

Officer B. Hernandez



**JERAH R
CORDOVA**
MAYOR
LEONA VIGIL
CITY MANAGER

CITY OF BELEN
100 SOUTH MAIN STREET
BELEN, NEW MEXICO 87002
(505) 966-2730 • FAX (505) 864-8408
www.belen-nm.gov

WAYNE GALLEGOS
CITY COUNCILOR
DAVID CARTER
CITY COUNCILOR
RONNIE TORRES
CITY COUNCILOR
FRANK ORTEGA
CITY COUNCILOR

CASE REPORT

October 3, 2018

CONDITIONAL USE REQUEST

Location: 919 S Main St., Belen NM 87002

SITE DATA

Existing Use: Commercial

Lot Size: .63 acres (27,442.80 Sq. Ft.)

Direction	Zoning	Existing Land Use
North	C-1	Commercial/businesses
East	C-1	Commercial/businesses
South	C-1	Commercial/businesses
West	R-1	Residential

*See attached zone map.

REQUEST

The applicant is requesting a Conditional Use to Place a 8 foot fence around the property.

Conditional Use Requirements:

1. Type of Conditional Use requested and why
2. Affidavit of ownership
3. Location of Conditional Use request.
4. A map showing the location of structures, on-site parking and point of access to public streets

STAFF FINDINGS

1. S Main consists of commercial businesses.
2. Properties on the West side are Residential.

3. The setbacks on a Commercial lot are 6 foot front, 15 Feet rear, and 5' sides.
4. The fence meets the front setback. The height of the fence is above the 6 foot regulation.
5. There are no clear site issues for vehicle traffic or pedestrian traffic.
6. The fence height restrictions are three feet solid for the front setback of 20' from the property line or a four foot clear view within that front setback with a maximum height of 6 feet.
7. Owner wishes to place a 8 foot security fence all around the property.

17.32 - C-1 GENERAL COMMERCIAL**Sections:****17.32.010 - Intent.**

The purpose of this zone is to provide for those commercial uses which serve the community on a day-to-day basis such as retailing, financial, and personal services.

(Ord. No. 2015-14, 11-16-2015)

17.32.020 - Accessory uses.

All accessory uses in this zone shall be the same as those listed in the R-2 zone district.

(Ord. No. 2015-14, 11-16-2015)

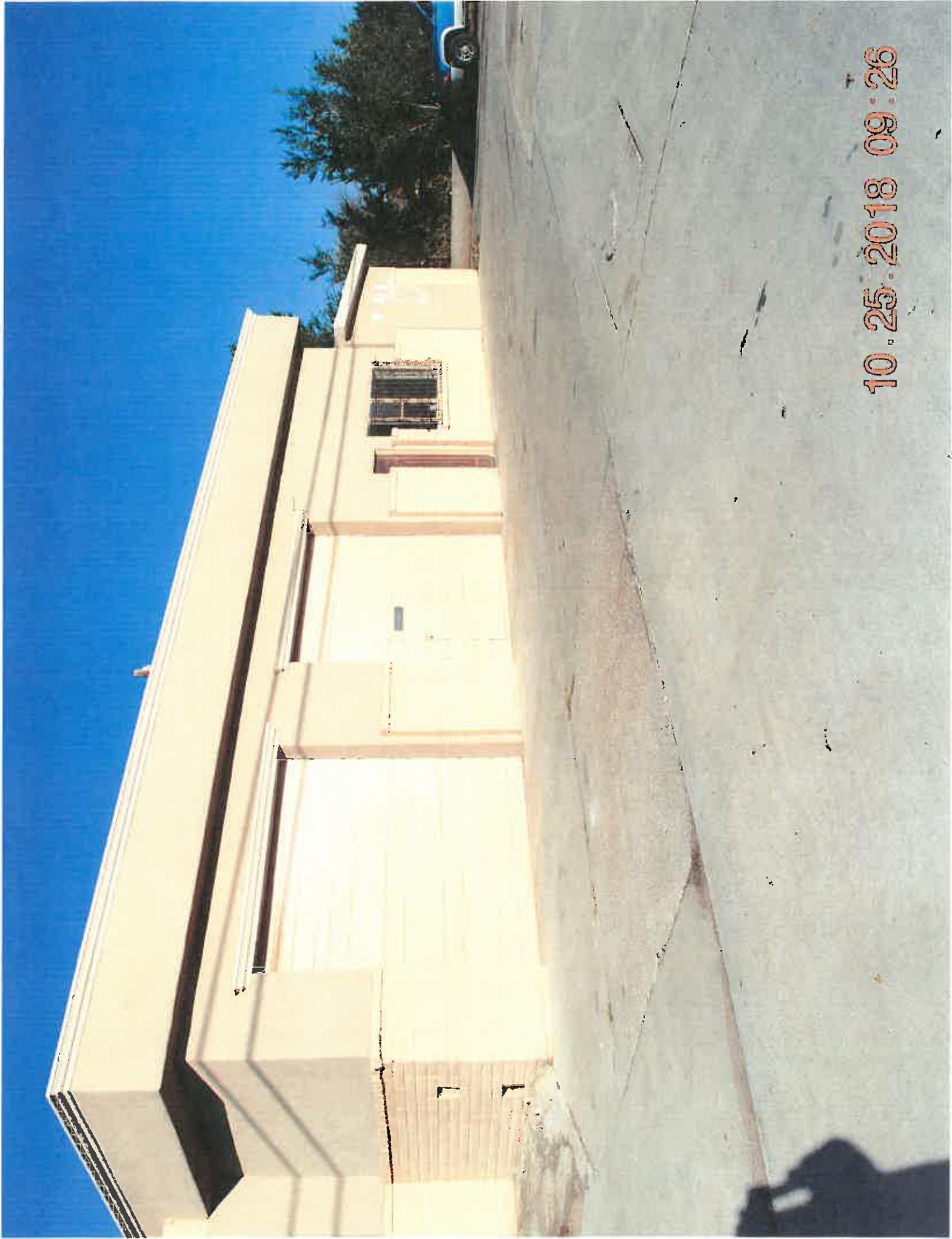
17.32.030 - Supplementary regulations.

- A. **Area.** Any lot under a residential use shall have a minimum ground area of seven thousand (7,000) square feet and a minimum width of seventy (70) feet.
- B. **Setback.** Any lot under a residential use shall have the same setback requirements as those prescribed in the R-2 zone district. Any lot in commercial use shall have a front setback of six (6) feet.
- C. **Height.** No building or structure shall exceed forty-five (45) feet except as otherwise provided in this title.
- D. **Off-Street Parking.** Provided in chapter 17.56 of this title.

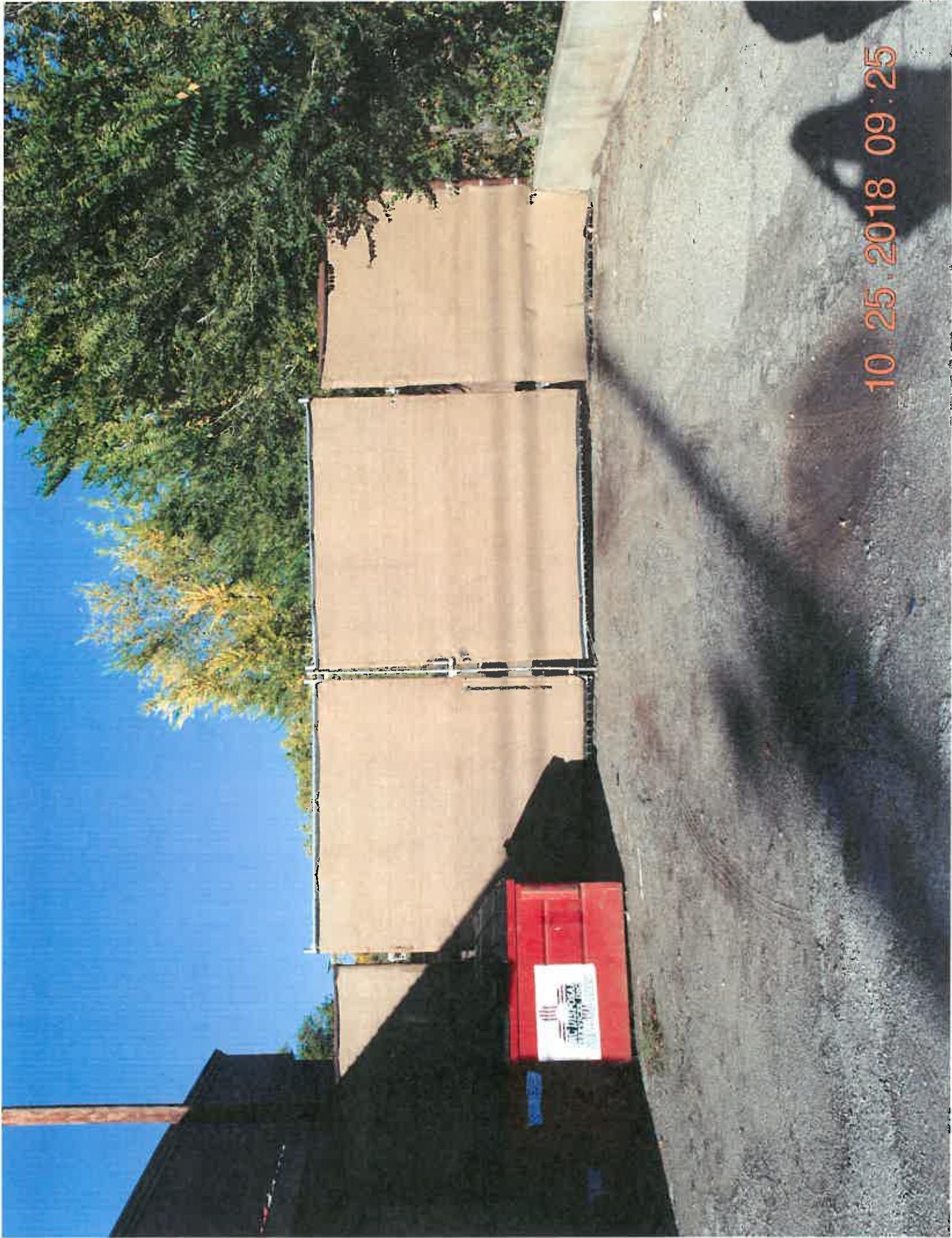
(Ord. No. 2015-14, 11-16-2015)



10.25.2018 09:26



10.25.2018 09:26



10.25.2018 09:25



10.25.2018 09:26

**CITY OF BELEN
ORDINANCE**

AN ORDINANCE OF THE CITY OF BELEN, NEW MEXICO AMENDING THE BELEN CODE OF ORDINANCES TITLE XV LAND USAGE, CHAPTER 15.33 EROSION CONTROL; STORM DRAINAGE AND STORMWATER QUALITY, SECTION 15.33.001 – 15.33.038, FOR THE PURPOSE OF REDUCING THE DISCHARGE OF POLLUTANTS TO THE “MAXIMUM EXTENT PRACTICABLE”, PROTECT WATER QUALITY, AND SATISFY CLEAN WATER ACT REQUIREMENTS; PROVIDING FOR INTERPRETATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS: the Governing Body of City of Belen, has adopted zoning regulations in accordance with New Mexico Statutes Annotated 1978 (NMSA 1978) Chapter 3, Article 21; and,

WHEREAS: the Governing Body finds a need to amend zoning regulations related to Storm water Quality;

WHEREAS: in accordance with Belen **Code of Ordinances (R.O. 2003) Section 33.15(C)(2)(f), on March 27, 2018**, the City of Belen Planning and Zoning Board reviewed the proposed amendments to the zoning regulations applicable to the territory within the boundaries of the City, and following study and consideration has made findings (where applicable), and made these recommendations to the Governing Body regarding adoption of the changes; and,

WHEREAS: the Governing Body received a report from the Planning and Zoning Board, and such report indicates the Planning and Zoning Board has studied and considered the proposed changes; and,
WHEREAS: public hearings occurred, in accordance with procedures set forth in Belen Code of Ordinances **(R.O. 2003) Section 150.07, and NMSA 1978 Section 3-21-6**, on the proposed zoning regulation changes and were duly advertised and held by the Governing Body of the City of Belen on _____, and the Governing Body heard interested parties and citizens for and against the proposed amendments; and,

WHEREAS: the proposed amendments to be adopted by this Ordinance comply with the statutory and regulatory requirements of the aforesaid Code of Ordinances and Statutes, and upon findings and determination that the proposed amendments are consistent with the policies and criteria set forth in **R.O.2003 and the City’s Comprehensive Plan**, the Governing Body finds that the amendments promote the health, safety, morals, and general welfare of the City.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BELEN: Section 1. Amendments to Belen Code of Ordinances Chapter 15.33 “Erosion Control; Storm Drainage”, is hereby amended to add an Article providing for regulations related to Illicit Discharge Detection and Elimination (IDDE).

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

**CHAPTER 15.33
EROSION CONTROL; STORM DRAINAGE AND STORMWATER QUALITY**

Section

General Provisions

- 15.33.01 Authority**
- 15.33.02 Jurisdiction**
- 15.33.03 Purpose and intent**
- 15.33.04 Title**
- 15.33.05 Definitions**
- 15.33.06 Applicable lands**
- 15.33.07 Compliance**
- 15.33.08 Warning; disclaimer of liability**
- 15.33.09 Interpretation**

Control Standards

- 15.33.20 Design, construction and maintenance**
- 15.33.21 Stormwater quality protection**
- 15.33.22 Surface use of streets**
- 15.33.23 Crossings**
- 15.33.24 Rights-of-way and easements**
- 15.33.25 Financial and maintenance responsibility**

Illicit Discharge Detection and Elimination (IDDE) Standards

- 15.33.30 Design, construction and maintenance**
- 15.33.31 Specific IDDE protections**
- 15.33.32 City IDDE responsibilities and response**

Administration and Enforcement

- 15.33.35 City Engineer; duties and determination**
- 15.33.37 Enforcement**
- 15.33.38 Appeals**

GENERAL PROVISIONS

15.33.01 AUTHORITY.

This chapter is adopted pursuant to statutory authorities.

The Environmental Protection Agency (EPA) issued a watershed based municipal separate storm sewer system (sMS4) permit to all jurisdictions within the permitted watershed area in _____. The EPA requires that "each permittee shall implement the legal authority granted by the State or Tribal Government to control discharges to and from those portions of the Small MS4 (sMS4) over which it has jurisdiction." (NPDES Permit No. NMR040000 or successive permits.) The city has another NPDES permit for our sewage treatment plant, NM0020150.

* ('87 Code, § 8-7-1) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)

15.33.02 JURISDICTION.

This chapter shall apply to all newly developed lands within the city and, with respect to planning and platting matters, it shall also apply to all lands within its extraterritorial planning and platting jurisdiction.

* (87 Code, § 8-7-2) (Ord. 84-113; Am.. Ord. 91-037; Am. Ord. 18-13)

15.33.03 PURPOSE AND INTENT.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flooding by provisions designed:

(A) To establish policies, procedures, criteria and requirements to complement and to supplement *Chapter 152 for the assistance and guidance of the city officials, city staff and all persons and entities within the jurisdiction of the city.

(B) As to storm drainage, to:

- (1) Prevent the creation of public safety hazards and seek to eliminate existing problems;
- (2) Prevent, to the extent feasible, the discharge of storm runoff from public facilities onto private property;
- (3) Prevent the increased risk of damage to private property caused by storm runoff from other private property;
- (4) Provide a reasonable level of public health and convenience at reasonable cost; and
- (5) Provide for timely and effective construction and maintenance of storm drainage facilities.

(C) As to storm water quality, to:

<* (1) Integrate storm water quality policies, criteria, and requirements with Chapter 52, Water *Conservation, and with applicable elements of: Chapter 90, Animals (Section 90.18(A)(3), animal *waste); Chapter 50, Solid Waste (Section 50.03, Definitions, Section 50.05, Accumulation of solid *waste, and Section 50.07, Residential and commercial collection); Chapter 91 Nuisances; Health *and Sanitation (Section 91.04, Exterior premises and vacant land, and Section 91.07, Littering); *and with other related Municipal Code chapters, standards, and guidelines, including the *Development Process Manual >

(2) Reduce quantity and improve the quality of storm water runoff within the context of mimicking predevelopment hydrology and within the limits of state water law.

(3) Address ordinance implementation requirements of the city's watershed-based storm water discharge permit (i.e., SMS4 permit or NPDES permit).

(4) Address construction and post-construction storm water quality management within the limits of state water law and, where applicable, within flood control agency authorities and limitations.

(5) Ensure to the maximum extent practicable that discharges to and from the city's storm water drainage system and facilities do not cause or contribute to exceedances of applicable surface water quality standards.

(6) Prohibit non-storm water discharges and minimize release of gross pollutants (e.g., trash) to the city's storm water drainage system, and provide for appropriate enforcement procedures and actions.

(7) Address discharges from industrial activities to the city's storm water drainage system.

(8) Work cooperatively with Valencia County and other co-permittees to best manage the discharge of storm water runoff into co-permittees' facilities, maximize efficient use of storm water facilities and minimize impact on downstream water quality and storm water drainage facilities.

(9) Promote and encourage the use of green infrastructure/low impact development (GI/LID) for water conservation in landscaping and in the treatment of storm water prior to discharge to the waters of the U.S.

*(87 Code, § 8-7-3) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)

15.33.04 TITLE.

This chapter may be cited as "The Drainage Chapter" and is referred to elsewhere herein as "the chapter."

*(87 Code, § 8-7-4) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)

15.33.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BEST MANAGEMENT PRACTICES (BMP). The schedules of activities, labor, equipment and material; prohibitions of practices; maintenance procedures; and other management practices (public or private) to prevent or reduce the pollution of waters of the U.S. BMPs include devices, practices or methods for removing, reducing, retarding, or preventing targeted storm water runoff constituents, pollutants, and contaminants from reaching receiving waters. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage.

BURDEN OF PROOF. Reasonable evidence or presumptions regarding ownership of wastes and/or the responsible party involved in an illicit discharge detection and elimination (IDDE) event. In the presence of prima facie evidence and reasonable assumption, the burden of proof to establish a non-violation of this chapter falls to the responsible party.

CHANNEL. Any arroyo, stream, swale, ditch, diversion or water course that conveys storm runoff, including manmade facilities.

CHANNEL STABILITY. A condition in which a channel neither degrades to the degree that structures, utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent property is endangered.

CHANNEL TREATMENT MEASURE. A physical alteration of a channel for any purpose.

CIP. The city's capital improvement program.

CITY. The City of Belen, New Mexico.

CITY ENGINEER. The chief administrative engineer of the city or the City Manager's designee as the administrative authority assigned to implement this chapter.

COMPREHENSIVE PLAN. The comprehensive plan and amendments thereto.

CONCEPTUAL GRADING AND DRAINAGE PLAN. A plan prepared in graphical format showing existing and proposed grading, drainage control, flood control, storm water quality and erosion control information in sufficient detail to determine project feasibility.

CONSTRUCTION GENERAL PERMIT (CGP). The EPA-issued general permit for storm water discharge associated with construction activity.

COOPERATOR/COOPERATIVE AGREEMENT. Any arrangement, organization, or joint functioning of the co-permittees, or in combination with other governmental agencies, which works constructively with the city to address mutual storm water issues. The cooperation, agreements, and functionality may be informal, customary, or more formally documented through written agreement, contracts, joint planning documents, or ordinances.

CO-PERMITTEE. Any entity discharging storm water within the urbanized area under the auspices of the EPA-issued watershed-based NPDES Permit No. NMR040000 or successor permits.

DESIGN STORM. A storm which deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control, water quality and erosion control measures.

DEVELOPED LAND. Any lot or parcel of land occupied by any structure intended for human occupation, including structures intended for commercial enterprise.

DEVELOPER. Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in the platting, subdivision, filling, grading, excavation or construction of structures.

DIRECTLY CONNECTED IMPERVIOUS AREA (DCIA). The portion of impervious area with a direct surface or infrastructure hydraulic connection to the city's storm water system or receiving waters via continuous impervious area or by other means of impervious conveyance features such as gutters, pipes, drains, and other impervious features.

DISCHARGE. The release of storm water, in whatever manner or composition, to or from the city's storm water system.

DISPOSE, DISPOSAL, DISCHARGE, RELEASE. Causing, allowing, abandoning, depositing, placing, injecting, releasing, spreading, dumping, spilling, leaking, or other similar actions by whatever term of use, of wastes in whatever manner or composition to storm water or to the storm water drainage system of the city or its co-permittees.

DOWNSTREAM CAPACITY. The ability of downstream major facilities to accept and safely convey runoff generated upstream from the 100-year design storm.

DRAINAGE. Storm water drainage.

DRAINAGE CONTROL. The treatment and/or management of surface runoff from all storms up to and including the 100-year design storm.

DRAINAGE PLAN. A short, detailed plan prepared in graphical format with or on a detailed grading plan addressing on-site and off-site drainage control, flood control and erosion control issues for lots or parcels of less than five acres.

DRAINAGE REPORT. A comprehensive analysis of the drainage, flood control and erosion control constraints on and impacts resulting from proposed platting, development or construction project.

EPA. United States Environmental Protection Agency.

EROSION CONTROL. Treatment measures for the prevention of damages due to soil movement and to deposition from the 10-year design storm runoff.

EROSION CONTROL PLAN. A plan for the mitigation of damages due to soil erosion and to deposition from the 10-year design storm runoff.

FLOATABLES/FLOATABLE DEBRIS. Rubbish/litter/wastes and vegetative debris in storm water runoff. Litter and other manmade pollutants such as plastic, paper products, polystyrene, cigarette butts, diapers, aluminum cans, bottles, construction trash, wood products, and vegetative debris including leaves, tumbleweeds, twigs, grass clippings, manure, yard waste and like items, that float or remain suspended in storm water flows.

FLOOD CONTROL. The treatment measures necessary to protect life and property from the 100-year design storm runoff.

FLOOD HAZARD AREA. An area subject to inundation from the 100-year design storm runoff.

FLOODWAY. The channel of a river, arroyo or other water course and adjacent land areas that must be reserved in order to safely discharge the 100-year design storm runoff.

FULLY DEVELOPED WATERSHED. A hydrological condition in which all areas upstream and downstream of a point in question are assumed completely developed, including any undeveloped areas which are assumed to be developed in accordance with midrange development densities as established by the comprehensive plan, appropriate area plans or sector plans, adopted by the facilities master plans and the hydraulic and hydrologic standards established by this chapter.

GI/LID, GREEN INFRASTRUCTURE (GI), LOW IMPACT DEVELOPMENT (LID). Any array of products, technologies, and practices that preserve or use natural systems, or engineered systems that mimic natural processes and systems, to enhance overall environmental quality and more specifically that provide treatment resulting in storm water quality improvement.

GRADING PLAN. A plan describing the existing topography and proposed grading, including retaining wall locations and details, interfaces with adjacent properties, streets, alleys and channels, referenced to mean sea level based on the New Mexico State Plane, Central Meridian, with vertical datum utilizing North American Vertical Datum 1988 (NAVD '88) and horizontal datum utilizing North American Datum 1983 (NAD '83), and showing sufficient contours, spot elevations and cross-sections to allow a clear understanding by reviewers, contractors and inspectors.

GROSS POLLUTANTS. Floatables and debris items larger than five millimeters.

ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE). The detection and elimination of non-storm water discharges and pollutants to the MS4. This term may be used synonymously with any number of terms of a nature similar to illicit discharge, illegal disposal, or illegal dumping.

ILLICIT DISCHARGE/ILLEGAL DISPOSAL/ILLEGAL DUMPING. Discharges not composed entirely of storm water into the city's or other co-permittee's MS4, except discharges pursuant to an NPDES permit or those otherwise allowed by exception of the city, or the placement or release of any manner of materials defined as waste, solid waste, or pollutant directly into or in a manner that can reasonably be expected to result in a direct release of materials into the city's or a co-permittee's MS4.

IMPERVIOUS SURFACE/IMPERVIOUS AREA. Conventional constructed surfaces such as pavements, sidewalks, driveways, roadways, parking lots, and rooftops that are intended to be impermeable or water resistant. Highly compacted soils may also be considered to be impervious as may be landscaped areas which are underlain by plastic sheeting which is not intended to allow the passage of water into the underlying soil layer.

INDUSTRIAL FACILITY/INDUSTRIAL ACTIVITY. A property that has discharges associated with industrial activity as defined by federal regulations in [40 CFR 122.26\(B\)\(214\) I – XI](#) and the activities which occur on the property.

MAINTENANCE. The cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

MAJOR ARROYO. Any channel whose watershed exceeds 320 acres in a 100-year design storm whether the watershed is in its natural unaltered state or has been altered by development, runoff diversions or detention facilities.

MAJOR FACILITY. Any facility, including a street or alley, which would collect, divert or convey a peak discharge of more than 50 cubic feet per second (50 cfs) or detains more than two acre-feet of runoff in the event of a 100-year design storm.

MANAGED ON SITE. To control, direct, and treat the storm water quality design volume on the property, or if from an area of common development, then at an alternate location designed for storm water management or as otherwise approved by the City Engineer. The control and treatment will be for water quality and/or flood volume purposes prior to discharge of the storm water to the city's or a co-permittee's MS4. Nothing in this definition shall be construed to require an action which the applicant or the city deems to be contrary to state water law, or to verbal or written state agency guidance regarding flood control or surface water capture, or which requires acquisition or amendment of a water right to legally implement.

MASTER PLANNED FACILITY. Any drainage control, flood control or erosion control facility recommended in the comprehensive plan, amendments thereto, or any voter-approved, general obligation bond financed drainage control, flood control or erosion control facility.

MAXIMUM EXTENT PRACTICABLE (MEP). A technology based discharge standard for MS4 operators regulated under the NPDES storm water program to reduce pollutants in storm water discharges. The water quality standard may be quantitative or in the form of a narrative discharge limitation, requiring BMPs designed to satisfy the technology requirement of the Clean Water Act (CWA) and protect water quality. BMPs are determined by permittee and permit authority.

MINOR FACILITY. Any facility which would collect, divert or convey a peak discharge of 50 cubic feet per second (50 cfs) or less or detains less than two acre-feet of runoff in the event of the 100-year design storm.

MULTIPLE USE FACILITY. A drainage control, flood control or erosion control facility in which other secondary uses are planned or allowed, including but not limited to recreation, open space, transportation and utility location.

MULTISECTOR GENERAL PERMIT (MSGP). The EPA-issued permit for storm water discharge associated with industrial activity. The MSGP has general requirements as well as industry sector-specific requirements as described in subparts A through AD of the MSGP.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (sMS4). The system of storm water conveyances and drainages owned, operated, or under the control of the city, or any such facilities or conveyances owned, operated or under control of the co-permittees to which or from which the city discharges or receives discharges of storm water, and within the urbanized area. The sMS4 includes all manner of natural and manmade, lined or unlined, ditches, arroyos, channels, canals, inlets, drains, and piping that are used to convey storm water. The term is used interchangeably to refer individually to the city's sMS4 specifically and also collectively to that of the city and co-permittees.

NARRATIVE DISCHARGE LIMITATIONS. Criteria and limitations that describe a desired water quality control.

NPDES. The National Pollutant Discharge Elimination System administered by the EPA under Title 33 of the United States Code. The EPA administers the NPDES program through issuance and enforcement of permits that authorize discharges to waters of the U.S.

NPDES PERMIT/PERMIT. The EPA-issued watershed-based NPDES MS4 Permit No. NMR04A000 or successor permits.

NPDES PROJECT MANAGER. The city staff person designated by the City Manager to oversee and ensure regulatory compliance with regard to the permit, who serves as the primary liaison to co-

permittees regarding permit and storm water quality issues, and who is responsible for application review as relates to storm water quality issues.

NUISANCE WATERS. Those waters leaving a site and entering a public street which do not result from precipitation, such as landscape overwatering or car washing.

100-YEAR DESIGN STORM. The storm in which precipitation within a six-hour period and resulting runoff has a one percent chance of being equaled or exceeded in any given year.

ORGANICS/ORGANIC DEBRIS. Organic material including leaves, branches, seeds, twigs, grass clippings and like items, including yard wastes.

POINT SOURCE. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

POLLUTANT/POLLUTION. The alteration of the physical, chemical, or biological quality of any waters of the U.S. that renders the water harmful, detrimental, or injurious to humans, fauna, flora, property, or public health and safety, or otherwise degrades or impairs (per Section 303 of the Clean Water Act) the quality of water and storm water. Pollutants include but are not limited to those materials and substances included within the terms *WASTE* and *SOLID WASTE*. Included in this definition is all manner of dredged spoil, solid waste, incinerator residues, filter backwash, sewage, garbage, sewage and septic sludges, drill fluids and cuttings, petroleum products and lubricants, floatable materials and fats, oils and grease (FOG). It also includes munitions, chemical waste, biological materials, radioactive materials (except those regulated on the Atomic Energy Act of 1954, as amended), heat, wrecked or discarded vehicles and equipment, earthen materials, and industrial, municipal, and agricultural waste. Pollution occurs when pollutants are improperly, illicitly, or illegally discharged, dumped, or otherwise disposed in the city's or co-permittee's storm water system. The definitions of *POLLUTANT* and *POLLUTION* are intended to be inclusive and liberally construed.

The following definitions from Title V, Section 50.03 and Title IX and Section 91.02 are hereby adopted for use in this chapter: ashes, debris, garbage, hazardous waste, litter, refuse, rubbish, and solid waste are intended to be included within the general terms *WASTE*, *SOLID WASTE*, and *POLLUTANT* as used in this chapter. Additionally, for purposes of this chapter, those materials excluded in the Chapter 50.03 definition for "solid waste" are hereby specifically included.

PREDEVELOPMENT HYDROLOGY. In general, the rainfall volume at which runoff would be produced from an area in its natural condition, prior to development disturbances. For the purposes of this chapter, this includes managing the storm water runoff volume prior to discharge to mimic the release of runoff volumes which would have occurred had the site remained in its natural condition prior to disturbance and in relation to a designated design storm event.

PRIORITY PROJECTS. Development categories that have been established to address developments that historically have the potential to generate serious storm water pollution problems during and after construction. Priority projects include:

- (1) Retail, water house and office developments in excess of one-half acre site size.
- (2) Automotive repair shops.
- (3) Restaurants.
- (4) Gas stations/fueling facilities.
- (5) Dumpster compactor and waste collection and storage pads on all commercial and industrial sites.
- (6) Residential developments with more than 10 residential units, excluding single-family housing subdivisions.

PUBLIC DRAINAGE SYSTEM. The path that storm runoff or other flow will follow from the furthest upstream parcels of land to city limits.

RESPONSIBLE PARTY. The person(s) or entity that has ownership or control of wastes. All wastes generated within or brought into the city are owned by and are the responsibility of the generator and/or person in control of the waste, jointly and severably, until such time as the waste is properly and legally disposed or removed by a licensed private contractor except where transfer of ownership is prohibited by state or federal requirements. Barring determination/proof of a responsible party other than the property owner on which wastes are found to have been disposed, ownership of the waste defaults to the property owner and/or the person(s) or entity having control of the subject property, excepting ownership by the city and co-permittees when such wastes are disposed in the public rights-of-way.

SEDIMENT(S). Soil, sand, and mineral conveyed in or deposited from storm water runoff.

SOLID WASTE. (See *POLLUTANT*.)

STORMWATER QUALITY DESIGN. Design including the selection of BMPs that manage the ninetieth percentile storm water quality design volume for new development and the eightieth percentile storm water quality design volume for redevelopment sites. Storm water quality designs shall be incorporated into the grading and drainage plan as part of the preconstruction review process.

STORMWATER QUALITY DESIGN STORM/EVENT. The ninetieth percentile storm event for new development and the eightieth percentile storm for redevelopment using the methodologies specified in EPA publication number 832-R-14-007, or developed for site-specific application using methodology described therein, or based on a site-specific predevelopment hydrology and associated storm event discharge volume specified therein.

STORMWATER QUALITY DESIGN VOLUME. The discharge volume associated with the storm water quality design storm/event.

STRUCTURAL TREATMENT CONTROL BMP. An engineered system designed, constructed, and maintained to remove pollutants from urban runoff. Structural treatment control BMPs can include gravity settling of particulate pollutants, filtration, screening, biological uptake, media adsorption or other physical, biological or chemical process.

TARGETED CONTROLS. Practices, techniques, or infrastructure implemented to address particular pollutants of concern.

TEMPORARY DRAINAGE FACILITY. A nonpermanent drainage control, flood control or erosion control facility constructed as part of a phased project or to serve until the time that a permanent facility is in place, including but not limited to desilting ponds, berms, diversions, channels, detention ponds, bank protection and channel stabilization measures.

TEN-YEAR DESIGN STORM. The storm in which precipitation within a six-hour period and resulting runoff has a 10% chance of being equaled or exceeded in any given year.

URBANIZED AREA (UA). The delineation of densely developed territory that encompasses residential, commercial, and other nonresidential urban land uses. The U.S. Census Bureau delineates urban areas after each decennial census by applying specified criteria to decennial census and other data. Urbanized areas (UAs) are as defined in the NPDES permit.

WASTE. (See **POLLUTANT.**)

WATER QUALITY VOLUME. The storm water quality design volume.

WATERS OF THE UNITED STATES (U.S.). Any of the various waters as defined in [33 CFR Part 328](#) and as designated by the U.S. Army Corps of Engineers.

**(87 Code, § 8-7-5) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 01-020; Am. Ord. 18-13)*

15.33.06 APPLICABLE LANDS

The requirements of this chapter and of the related NPDES permit shall apply to all areas within the jurisdiction of the city, including the currently incorporated limits within Valencia County, any other properties annexed by the city in the future, and the city's extraterritorial planning and platting jurisdiction.

This chapter shall not apply to federal lands and reservations, or as regards storm water, to the lands outside of the jurisdiction of the city or other co-permittees with jurisdictional authority to pass and enforce ordinances, unless specifically mentioned and included. NPDES co-permittees may share jurisdiction in matters of flood control, drainage and storm water quality. The jurisdiction of this chapter is not exclusive. In the event of conflict with ordinance or regulations of overlapping jurisdictions, the more stringent of the requirements as determined by the City Engineer shall apply.

*(Ord. 18-13)

153.07 COMPLIANCE. Revised 9/18

(A) The design, construction and maintenance of all storm water quality design, drainage control, flood control and erosion control facilities within the city shall be performed in accordance with procedures, criteria and standards formulated by the City Engineer and in accordance with the policies established by this chapter.

(B)(1) All construction activities within the jurisdiction of the city shall conform to the requirements of the City Engineer with respect to storm water quality design, drainage control, flood control and erosion control.

(2) All modifications to the public drainage system are subject to approval by the City Engineer.

(a) Construction, grading or paving on any lot within the jurisdiction of the city shall not increase the damage potential to upstream, downstream or adjacent properties or public facilities. Damages shall be defined as those caused by flooding from the 100-year design storm and all smaller storms and from erosion and sedimentation resulting from the 10-year design storm and all smaller storms.

(b) During the month of June, July, August or September, any grading within or adjacent to a watercourse defined as a major facility shall provide for erosion control and the safe passage of the 10-year design storm runoff during the construction phase.

(c) Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more or any grading which would modify the public drainage system or grading which would result in a building pad having an elevation less than one foot above the adjoining street or road shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the City Engineer, shall be required for any construction- or development-related grading activity, prior to the commencement of any such grading activity. This permit may be approved as part of a building permit; provided, that the building permit is reviewed and approved by the City Engineer. Applications for development of areas known to have been sanitary landfills shall be accompanied by a report which discusses potential health and soil mechanics problems and their solutions. The reports shall be prepared by a New Mexico professional engineer, competent in soil mechanics.

(d) Paving an area larger than 1,000 square feet shall require a paving permit. Applications for paving permits shall be accompanied by drainage plans, if deemed

necessary by the City Engineer. Repaving of existing paved areas in which no grading is planned is excluded.

(e) All residential grading shall comply with the most recent version of the Uniform Building Code adopted by the city.

(f) The City Engineer shall not issue a grading or paving permit unless the proposed grading or paving is in compliance with the policies of this chapter and the standards *and criteria of the City Engineer as provided by [Section 153.36](#).

(C) The city may participate with the private sector, other public bodies and agencies operating within the jurisdiction of this policy in order to accomplish the goals and implement the policies adopted in this chapter. This includes, but shall not be limited to, the development and adoption of master plans, participation in the construction of projects, and exercising control through the planning, platting, zoning and permitting processes. Projects involving city funding shall be prioritized, funded and scheduled within the guidelines of the city's Infrastructure Capital Improvement Plan (ICIP) and with capital improvement projects.

*('87 Code, § 8-7-12) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 01-020; Am. Ord. 18-13. Formerly 153.06)

15.33.08 WARNING; DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside flood hazard areas or uses permitted within the areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or on any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

*('87 Code, § 8-7-16) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.07)

15.33.09 INTERPRETATION.

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the city;

(C) Deemed neither to limit nor repeal any other powers granted under state statutes;

(D) Not deemed to limit nor repeal any other provision of this code, adopted by the governing body, unless expressly so stated herein.

*('87 Code, § 8-7-17) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.08)

CONTROL STANDARDS

15.33.20 DESIGN, CONSTRUCTION AND MAINTENANCE.

(A) The city endorses the goal of flood damage reduction through the regulation of development within flood hazard areas and the preservation of floodways. This chapter is intended to complement and ***supplement Chapter 152**, and shall be administered in concert therewith.

(B) All developed land within the city shall be provided with adequate drainage, flood control and erosion control facilities. The protection of life and property shall be considered with primary function in the planning, design, construction and maintenance of drainage control, flood control and erosion control facilities, but other concerns, not limited to the following, shall be addressed: channel capacity, watershed characteristics, channel stability, maintenance, transitions between treatment types, multiple use goals and appearance. The needs of the community in transportation, utility services, recreation, and open space shall be considered in planning, design, construction and maintenance (especially in the selection of channel treatment measures). These needs shall always be considered subsidiary to the primary function of the drainage control, flood control and/or erosion control facility.

(C) The design, construction and maintenance of dams, levees and diversions that fall within the jurisdiction of the State Engineer shall meet or exceed standards established by the State Engineer.

(D) The design, construction and maintenance of flood control facilities shall be coordinated with other affected flood control agencies.

(E) All major facilities shall be constructed within dedicated rights-of-way or recorded drainage easements granted to and accepted by the proper public authority.

(F) All detention ponds defined as minor facilities shall be constructed on private property unless otherwise authorized by the City Engineer. Except as is necessary for the treatment of nuisance water, all ponds shall be designed and constructed to be emptied in 96 hours or less. The use of individual lot ponding shall be governed by the standards established by the City Engineer.

(G) Wherever flood control, drainage or erosion control improvements are necessary within dedicated public open space, the improvements shall be designed and constructed in a manner reasonably consistent with the natural surroundings. All construction and maintenance activities in dedicated open space shall be performed so as to minimize the disruption and destruction of vegetation and adjacent land forms. Where the disturbance or destruction is unavoidable, revegetation shall be performed at the earliest practical time by those responsible for the disturbance and/or destruction.

(H) Site development, major or minor subdivisions, or replats for industrial activities shall be designed and constructed such that non-storm water discharges into the storm sewers, arroyos or watercourses will not intentionally occur. Some non-storm water discharges are allowable as authorized by the NPDES permit.

(I) For all new industrial and commercial development and for all new residential development requiring a grading and drainage plan and approval, all storm water discharge resulting from the storm water quality design event must be managed on site for water quality prior to discharge from the property.

Implementation of storm water BMPs into the landscape and grading design plans to minimize runoff and to increase on-site rainwater retention will be required. No discharge from directly connected impervious areas resulting from the storm water quality design storm or lesser storms will be allowed without on-site treatment prior to release to the SMS4, or provision of means to minimize such discharges to the maximum extent practicable.

(J) For all new development and projects that meet the definition of priority project and require drainage plans, structural treatment control BMPs shall be considered, incorporated, and implemented into project designs as required by Volume II, Section 10 of the City of **Belen Development Manual**, or as may be amended from time to time.

(K) For all new and redevelopment of industrial and commercial properties requiring a paving permit, the site plan will be evaluated by the applicant for the treatment of storm water from directly connected impervious areas, particularly driveways and parking lots. If, in the opinion of the City Engineer, control and treatment of storm water prior to discharge from such areas to the SMS4 is practicable, such measures shall be implemented, or other practical measures or alternatives to minimize such discharges may be utilized as approved by the City Engineer.

(L) The City Engineer is responsible for establishing criteria, procedures and standards for design and construction of flood control, drainage control and erosion control improvements within the city. The City Engineer shall provide for variance from normal criteria and standards; when a variance is required or requested, the City Engineer shall document the justification for his decision and place in the public records with the City Clerk the actions and justifications; appeals of the City Engineer's variance decisions are as provided in Section [15.33.38](#).

*(87 Code, § 8-7-6) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)

15.33.21 STORM WATER QUALITY PROTECTION.

(A) Storm water quality protection for construction phase.

(1) For all grading, construction, development, and redevelopment projects, both public and private, with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development, a storm water pollution prevention plan in accordance with EPA NPDES regulations for construction site storm water runoff control shall be submitted to the City Engineer, prior to the issuance of a building or paving permit or approval of a grading and drainage plan. This requirement is in addition to any other provisions of this chapter that may apply.

(2) The storm water pollution prevention plan shall outline the structural and nonstructural BMPs to be undertaken by the operator/owner of the project to protect storm water quality

during the construction phase of the project. These BMPs shall be maintained by the owner of the property. Inspection of these BMPs shall be made at a frequency consistent with the CGP by the owner, and a log of this inspection shall be kept on site for review by the City Engineer. The city may also inspect these BMPs on a periodic basis. These BMPs shall be subject to review by the City Engineer.

(B) Storm water quality protection for post-construction phase.

(1) State water laws, flood control authorities and application to post-construction BMP selection.

(a) The position of Office of the State Engineer, at the time of enactment of this chapter, is that all detained storm water must be released within 96 hours and local flood control authority requirements prevail over the requirements of the NPDES permit.

(b) The NPDES permit provides that where state water law limits the ability to fully retain storm water quality design volume on site, measures to minimize increased discharge consistent with requirements under state water law must still be implemented. Local flood control requirements and NPDES permit requirements may be met through a combination of on-site and off-site controls.

(c) The NPDES permit contains a list of possible infeasibility considerations for post-construction BMPs. The permit allows for consideration of "multiple criteria that rule out an adequate combination of the practices," and further indicates that state water law may limit the ability to fully manage the storm water quality design volume on site. Authorization to use off-site storm water quality mitigation shall be solely determined by the city.

(d) Where applicable state water law limits the ability to address storm water BMPs requiring infiltration, reuse or other beneficial uses that require permits under state environmental or water law or acquisition of water rights, such BMPs may be determined by the city to be "not practicable" and alternative compliance may be considered.

(2) Post-construction BMP design requirements and implementation.

(a) For all development and redevelopment projects with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development, that discharge into the city's storm drainage system, post-construction water quality BMPs to manage the storm water quality design volume are required. This requirement is in addition to any other requirements that may apply. These BMPs shall be subject to the approval of the City Engineer and NPDES Project Manager.

(b) The selection of management BMPs must be included in a storm water quality design (incorporated into the grading and drainage plan as part of the preconstruction review process and, as such, subject to inspection during construction, at final inspection, and as a condition of final construction approval) that manages the ninetieth percentile storm water quality design volume for new development and the eightieth percentile storm water quality design volume associated with redevelopment sites.

(c) Management of the storm water quality design volumes on site, as defined in this chapter, is expected to be implemented, in large part, for new development in a manner consistent with the NPDES permit's intent to reduce pollutants in storm water (e.g., a water quality facility).

(d) The selection of structural treatment control BMPs for priority projects must be included in a storm water quality design to meet the criteria listed in Volume II, Section 10 of the **City of Belen ?Development Manual**, or as may be amended from time to time.

(e) Where practicable, BMPs will be selected and designed to first and primarily manage flow from the contributing area impervious surfaces. Selected BMPs should include the following elements to improve on-site storm water runoff quality:

1. Grade impervious surfaces, such as driveways, during construction to drain to vegetated areas.
2. Minimize the area of impervious surfaces such as paved areas, roof and concrete driveways.
3. Incorporate pervious or porous surfaces where allowable (e.g., gravel, permeable pavers or blocks, pervious or porous concrete) that minimize runoff.
4. Direct runoff from paved surfaces and roof areas into planting beds or landscaped areas to maximize site water capture and reuse.
5. Incorporate rain gardens, cisterns, and other rain harvesting or catchment systems consistent with current New Mexico State Engineer guidance.
6. Incorporate beds, swales, basins and other such features to manage storm water and dry weather runoff (e.g., irrigation system overspray) and increase percolation into the soil for landscape use.

(f) The BMPs and structural treatment control BMPs must include an evaluation by the applicant of the GI/LID practices and a determination and inclusion of the viable BMPs that will be implemented. The evaluated BMPs can and should be integrated with water conservation techniques such as passive water harvesting, rooftop harvesting as allowed by state water law, and/or soil amendment programs that improve the capacity of the soil texture to retain water. Examples of suitable BMPs that employ GI/LID practices can be found within the National Pollutant Discharge Elimination System Manual – Storm water Management Guidelines for Construction and Industrial Activities.

(g) As-built plans for storm water quality designs must be submitted prior to final inspection. Grading and drainage plans or other required planning documents must specifically identify post-construction BMPs that are required to be maintained and inspected.

(h) BMP(s) must be inspected by the NPDES Project Manager or other city designated qualified person and found to be in compliance with all approved plans and specifications prior to the release of certificate of occupancy or other city required approval for the site.

(i) Post-construction agreements and inspection and maintenance requirements are as outlined in subsections (B)(3) and (B)(4) of this section.

(3) *Alternative compliance for post-construction due to infeasibility.*

(a) The applicant may submit to the City Engineer a request for a determination of infeasibility for on-site management of all or a portion of the storm water quality design volume based on the limitations provided in subsection (B)(1)(d) of this section. If, at the discretion of the City Engineer, the request is confirmed, an alternative compliance strategy acceptable to the City Engineer shall be implemented to address predevelopment hydrology concern prior to discharge to waters of the U.S. or to a co-permittee's SMS4.

(b) The limitations of subsection (B)(1)(d) of this section should not be construed to be exclusive, and other valid bases, other than costs, may also be considered. Such bases may include, but are not limited to:

1. Entitlements granted prior to the effective date of the permit.
2. Previous authorization from the city or co-permittees to utilize existing public off-site infrastructure granted prior to the effective date of the permit.
3. Proposed use of a public, common, or private facility that is not strictly on site, but that is designed to be utilized by an area or plan of common development (i.e., minor facilities incorporated into a master plan, planned community, subdivision, or village center).
4. Proposed and contracted use of a joint private facility, with agreement terms subject to approval by the City Engineer, though not an area of common development, and located prior to a discharge to the MS4 (e.g., reciprocal drainage agreements and easements).
5. Instances where post-development drainage does not and/or cannot practically connect to the Rio Grande or the MS4 or co-permittee's SMS4.
6. Instances where appropriate public or private drainage facilities are available off site and will be used in a manner consistent with the goals and intent of this division to manage the storm water quality design volume to mimic predevelopment hydrology and to address storm water quality improvement, and located prior to discharge to waters of the U.S., and as determined and approved by the City Engineer.

(c) Availability of off-site private facilities will be demonstrated through appropriate engineering reports demonstrating the shared capacity of the facility and a joint voluntary agreement between parties that addresses ownership, maintenance, and inspection responsibilities that is equally, jointly, and severably enforceable against and between all parties.

(d) Availability of off-site public facilities of the city or other co-permittees as documented by and subject to:

1. A determination by the city, a letter from Valencia County or other applicable co-permittee, as pertains to their respective facilities conditioned as needed, indicating that:

a. Existing infrastructure capacity is adequate to accept the storm water quality design volume from the fully developed watershed or sub-watershed within which the development or redevelopment is located.

b. The requirement for on-site retention from the releasing property may, accordingly, be waived for all or a portion of the storm water quality design volume, and clearly stating the proportional volume that must be addressed on site.

c. Specifying any water quality treatment that is required prior to release.

d. Assurance to the city that water quality compliance will be fully addressed by the accepting parties' infrastructure prior to discharge to waters of the U.S.

2. Full or partial on-site treatment for storm water quality acceptable to the City Engineer and to owner and operator of the alternate compliance facility will be required prior to discharge to the receiving facility. The more stringent of treatment requirements specified by the City Engineer or the co-permittee will apply.

3. No discharge of any portion of the storm water quality design volume (other than under those approved through other NPDES permit means) will be discharged from the site to any sMS4 without a minimum level of treatment (GI/LID or structural) to address floatables, gross pollutants, and/or site specific pollutants of concern as determined by the City Engineer and the NPDES Project Manager.

4. The maintenance of the on-site storm water quality feature remains the responsibility of the property owner/operator.

5. Annual inspection of the installed on-site water quality feature will be performed and documented by the owner/operator and records will be provided upon request by the City Engineer and/or equivalent position of the co-permittee. Because of the reliance on off-site public facilities, an annual inspection applies rather than the three-year inspection schedule for private facilities specified for post-construction inspection and maintenance, as described in subsection (B)(4)(b) of this section.

(4) Post-construction inspection and maintenance.

(a) Private storm water facilities shall be maintained by the facility or property owner to standards established by the City Engineer, published in the Development Process Manual, and/or in related city ordinances.

(b) Periodic inspection and certification of private facilities by a professional engineer licensed in the State of New Mexico or otherwise qualified storm water person (as determined by the City Engineer) are required of the facility/property owner and shall occur no less frequently than once every three years from the date of final construction inspection.

1. When reliance on off-site public facilities exists, an annual inspection applies rather than the three-year inspection schedule for private facilities specified for post-construction inspection and maintenance.

2. The responsibility and cost for the inspection is the responsibility of the private facility owner and/or property owner. The owner and property owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record, whether the inspection schedule is annual or every three years.

(c) Documentation of the inspection, maintenance activities, and repairs shall be provided to the City Engineer upon request or in the case of off-site mitigation to the owner of the receiving facility. Copies of the inspection reports shall be kept on file at the subject property/facility or at the offices of the property owner and/or manager, and shall be made available within two working days of an inspection request (whether verbal or written). A facility or BMP that cannot be certified or for which records cannot be provided in a timely manner shall be certified by current inspection and/or deficiencies corrected within 90 days of notice from the city that such correction or inspection is needed unless a more immediate action is deemed necessary by the City Engineer.

(d) All on-site post-construction BMPs or alternate compliance methods and techniques are subject to random inspections by the City Engineer per the inspection provisions of Section 153.20 and subsection (B)(1) of this section.

(e) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges of surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

(C) *The multisector general permit (MSGP) and industrial facility storm water quality protection.*

(1) For any existing industrial activities subject to the MSGP, proof of compliance with the relevant EPA industrial sector permit provisions shall be provided to the City Engineer prior to issuance of any building, zoning, special use, development or redevelopment permit or approval of a grading and drainage plan. For new industrial development projects, such proof will be provided no later than 90 days after receipt of the certificate of occupancy or other necessary permit or approval from the city. In cases where MSGP proof of coverage is required, an active EPA Notice of Intent or No Exposure Certification serves as proof.

(2) The City Engineer or NPDES Project Manager may require monitoring of non-storm water discharges if the Engineer/Manager reasonably believes that such discharges violate the provisions of this chapter or of the terms of the MSGP provisions.

(3) Upon request by the City Engineer or the NPDES Project Manager, an industrial facility subject to the MSGP shall submit the results of any sampling or monitoring undertaken pursuant to the MSGP or other water-related discharge permit.

*(Ord. 18-13)

15.33.22 SURFACE USE OF STREETS.

(A) The surface of streets may be used for drainage and flood control purposes, to the extent the use does not interfere with the safe transportation of people and vehicles.

(B) The 100-year design storm runoff shall not exceed a depth of 0.87 feet at any point within the street right-of-way, or 0.2 feet above top of curb in any street, or enter private property, built in compliance with appropriate regulations, from a street, except in recorded drainage or flood control easements or rights-of-way (or historic channels and watercourses where easements or rights-of-way cannot be obtained).

(C)(1) The 10-year design storm runoff shall not exceed a depth of 0.5 feet in any arterial street and shall flow such that one 12-foot driving lane in each direction is free of flowing or standing water. The 10-year design storm runoff shall not exceed a depth of 0.5 feet in any collector street.

(2) Arterial and collector streets that are in the state highway system may require more stringent drainage criteria.

(D) The product of the depth times the velocity shall not exceed 6.5 at any location in any street in the event of a 10-year design storm (with velocity calculated as the average velocity measured in feet per second and depth measured at the gutter flow line in feet).

(E) The discharge of nuisance waters to public streets shall be discouraged. Arterial and collector streets shall be protected from damages to the pavement surface and from the safety hazards created by surface flow of nuisance waters across them.

(F) All newly developed land within the city shall be served by at least one paved access that shall be an all-weather facility during a 100-year design storm, with all channel-crossing structures beneath the roadway being able to pass a 100-year design storm runoff event.

(G) Excepting the specified depth, flow line, and velocity restrictions of this section, nothing in this section should be construed to prohibit the use of GI/LID in medians and within off-pavement rights-of-way for storm water quality treatment purposes upon approval by the City Engineer.

(*87 Code, § 8-7-7) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.21)

15.33.23 CROSSINGS.

(A) Channel-crossing structures shall be provided on all arterial and collector streets to safely pass the 100-year design storm runoff from major arroyos, assuming a fully developed watershed.

(B) Streets other than arterials, collector and sole access may cross major arroyos and other watercourses by means of a "dip section" or an "overflow section," provided depth times velocity (with velocity calculated as the average velocity measured in feet per second and depth measured in feet at the upstream edge of the roadway including sidewalk) does not exceed 6.5 for that portion of the 10-year storm runoff crossing on the street.

(C) Where feasible, temporary crossings shall be designed so they may be incorporated into the future permanent crossing structure so that they meet street design standards established by the City Engineer.

(D) Crossing of major arroyos by arterial and collector streets shall be at public expense. Crossings of arroyos by streets other than arterials and collectors shall be constructed at developer expense and shall meet street design standards established by the City Engineer.

(E) Temporary crossings required for access, including those on arterials and collectors, shall be constructed at developer expense.

(*87 Code, § 8-7-8) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.22)

15.33.24 RIGHTS-OF-WAY AND EASEMENTS.

(A) Multiple use is encouraged for drainage rights-of-way and drainage easements, e.g., for utility corridors and for recreation trails. Where multiple use is planned by the city, another public agency, or a public utility, the city may require that dedication statements include language which permits the uses in addition to the primary drainage function. However, land required to be dedicated for drainage rights-of-way and easements shall be limited to those land areas necessary for drainage control, flood control, erosion control and necessary appurtenances.

(B) Drainage rights-of-way and easements may be credited for open space, except for any area which is exclusively used for the drainage control or flood control function.

*(87 Code, § 8-7-10) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.23)

15.33.25 FINANCIAL AND MAINTENANCE RESPONSIBILITY.

(A)(1) The city may participate in the construction of permanent flood control facilities to the extent that public benefits are derived from the construction and are consistent with capital improvement program (CIP) priorities. Reimbursement for private funding of such projects may also be available under these conditions.

(2) The city may participate in the costs of channel-crossing structures for arterial and collector streets which are required for sole access to a development. The developer's share shall not exceed the cost required to meet the minimum street width standards established by the City Engineer.

(3) The city shall not participate in the funding of flood control facilities in which the sole intent is the reclamation of undeveloped land located within a flood hazard area for private development purposes.

(4) The dedication of land for public purposes does not relieve a developer of responsibilities for the construction of drainage control, flood control and erosion control facilities that would otherwise be necessary. The dedication of rights-of-way or easements for drainage control, flood control or erosion control facilities does not relieve a developer of responsibilities that would otherwise exist for the construction of other public infrastructure.

(B)(1) Except as otherwise noted herein, all permanent major facilities shall be maintained by the city or other public body. The maintenance of multiple use facilities to which the general public is denied access shall be the responsibility of the owners and shall be performed to City Engineer standards. The City Engineer may allow private maintenance within public right-of-way or easement; provided, that adequate guarantees and indemnifications are supplied.

(2) Minor facilities shall be maintained by their owners to City Engineer standards.

(3) The maintenance of temporary facilities constructed at private expense (except crossing structures) is the responsibility of the developer until permanent facilities are in place.

(4) The developer shall be responsible for maintaining or replacing temporary crossing structures for a period of six years or until a permanent structure is built, whichever comes first. The city shall maintain temporary crossings which are designated and built such that they may be directly incorporated into the ultimate facilities.

*(87 Code, § 8-7-11) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13. Formerly 153.24)

ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) STANDARDS

15.33.30 DESIGN, CONSTRUCTION AND MAINTENANCE.

(A) Authorized non-storm water discharges as described in the NPDES permit are subject to determination by the NPDES Project Manager or City Engineer that such discharges do not constitute a significant contributor of pollutants to the sMS4.

(B) The IDDE provisions listed herein do not apply to discharges resulting from a spill where discharge to the sMS4 is necessary for emergency response personnel to prevent, control, or minimize loss of life, personal injury, property damage, or facilitate a flood control response. These functions are, for the purposes of this division, considered a fire fighting/emergency response activity. However, the responsible party shall remain liable for all costs, damages, liabilities, and penalties that may have occurred due to the initial spill and all costs related to emergency spill response and remediation.

(C) Persons discharging to the city's sMS4 as a result of an accidental spill or accidental release who voluntarily and immediately self-identify and notify the state spill response hotline, if applicable, and who actively cooperate and demonstrate financial responsibility and willingness to address and appropriately remediate the spill and address resulting damages, and who properly and promptly dispose of resulting remediation wastes, will not be considered to have illicitly discharged to the sMS4 for enforcement penalty purposes under this chapter. This provision does not alleviate the responsible party for costs, damages, liabilities, and penalties that may be incurred under other local, state, or federal law or regulations, but does protect against enforcement penalties (but not actions) under the IDDE requirements of this chapter.

(D) The provisions of this section and Sections [15.33.31](#) and [15.33.32](#) do not apply to irrigation water to or from agricultural irrigation operations, but do apply to certain livestock operations as described below.

(E) The provisions of this section and Sections [15.33.31](#) and [15.33.32](#) also apply to industrial facilities addressed under Section [15.33.21\(C\)](#).

*(Ord. 18-13)

15.33.31 SPECIFIC IDDE PROTECTIONS

(A) No person or entity shall:

(1) Attempt to dispose, release, or discharge wastes, other than pollutant-free storm water into or through the sMS4, except as addressed by an authorized NPDES permit as described in Section [15.33.21\(C\)](#).

(2) Attempt to dispose, release or discharge household hazardous wastes (including, but not limited to: paint, solvents, automotive fluids, fertilizers, pesticides, herbicides, and other hazardous materials) to the sMS4; nor dispose, release, or discharge fats, oils, and grease to the sMS4.

*(3) Knowingly allow, or neglect routine property maintenance ([Section 50.05](#) and [Chapter 91](#)), to a degree that allows the discharge or release of sediment loads and gross pollutants into the sMS4 from industrial, commercial or private property under their control or ownership.

(4) Leave, accumulate, discharge, or allow animal waste of a companion animal ([Section 90.18\(A\)\(3\)](#)) on publicly owned property whatsoever, or on private property under their control or ownership in such a manner that it drains or can reasonably be anticipated to drain to the sMS4.

(5) Accumulate, pile, compost, or dispose of animal waste of livestock or exhibition animals on publicly owned property without approval of the city or other sMS4 co-permittee, or on private property under their control or ownership in such a manner that it drains or can reasonably be anticipated to drain to an sMS4. Animal wastes resulting from exhibition, stabling, corralling, dairying, feed lot, and confined feeding operations and all operations of a similar manner are included in this prohibition. Nothing in this chapter should be construed to prohibit handling of livestock or exhibition animal wastes allowed under other ordinances and permits or permissions on either public or private property, so long as the methods and protections employed minimizes or eliminates disposal, discharge, or drainage to the sMS4 to the maximum extent practicable. Animal wastes associated with normative pasturing and range feeding of agricultural livestock or exhibition animals does not constitute accumulation, piling, composting or disposing of livestock wastes.

(6) Allow fluids, wastes, or materials from any motor vehicle, equipment, contractor yards, outdoor storage areas, or any related storage or maintenance activities from such areas under their control or ownership to drip, flow, accumulate, or spread onto public property, or onto or through private properties of others, such that it drains or spreads or can reasonably be anticipated to drain or spread to the sMS4.

(7) Illegally dispose of waste, solid waste, or yard wastes originating from private property under their control or ownership or allow it to drain or spread to any public property whatsoever, or the property of others, in such a manner that it drains or can reasonably be anticipated to drain to the sMS4.

(8) Allow the commercial application of pesticides, herbicides, and fertilizers by any person or enterprise not specifically licensed by the state and permitted, by virtue of business license from the city, to perform such applications. Applications by private individuals or business owners or their employees is allowed so long as the application is for routine maintenance and sanitation, is performed in accordance with manufacturer directions, purpose of use, and application rates, and the use and application is in accordance with laws and ordinances pertaining to its use.

(9) Allow sanitary sewer, septic overflows, overflows from grease traps or flows from grease and fat accumulation areas, or overflows from trash compactors to flow from private property under their control or ownership and enter publicly owned property or the sMS4, or property of others, in such a manner that it drains or can reasonably be anticipated to drain to the sMS4.

(10) Allow flows from sanitary sewers, on-site wastewater treatment facilities, or other wastewater treatment devices to enter the sMS4 through a cross-connection of sanitary sewer pipe or from an open discharge from property under their control or ownership.

(11) Attempt to dispose, release, or discharge septic tank waste at any location within the city that is not specifically designated by the state to receive such wastes, nor dispose of septic tank waste to any public facility or infrastructure without the express authorization of the owner of that public facility.

(12) Allow, cause, or take any action or fail to take an appropriate action that is committed or omitted within their span of control and that in the opinion of the City Engineer or the NPDES Project Manager results in the release or disposal of non-storm water discharge to the city's MS4 or that of its co-permittees.

15.33.32 CITY IDDE RESPONSIBILITIES AND RESPONSE.

(A) Upon notification of a possible IDDE event, the NPDES Project Manager will determine the severity of the event and determine the likely jurisdiction. Severity of the event will be determined based upon a combination of factors including, but not limited to, volume, nature of material, location, and risk to human life, health, property, and the environment. Upon determination of a significant/severe illicit discharge, the NPDES Project Manager shall initiate, either on behalf of the city or jointly with appropriate co-permittees, an investigation of the event within 48 hours of notification, and shall address other lesser IDDE events as soon as practicable in a similar and timely manner.

(B) The City Engineer or NPDES Project Manager may make such inspections as are reasonably necessary for investigation and elimination of such discharges as expeditiously as possible.

(1) If the IDDE event is found to be within the jurisdiction of a co-permittee or other jurisdictional entity, the City Engineer or NPDES Project Manager will promptly notify the appropriate entity upon such determination and document the notification and transfer of responsibility and control of the event to the appropriate entity.

(2) The City Engineer or NPDES Project Manager may offer assistance to the lead entity as best meets the city's interests in remediating the incident in a timely manner.

(3) If the IDDE event falls within city jurisdiction, the NPDES Project Manager, or other city employee recognizing such an event, shall initiate an IDDE record of complaint, initiate a site inspection request, and the NPDES Project Manager shall ensure notification of the appropriate state authorities as required based on the nature and magnitude of the event and shall document such notification.

(4) Other cooperative agreements for addressing cross-jurisdictional IDDE events and remediation may be developed and used in lieu of the provisions of this section.

(C) Once the City Engineer or NPDES Project Manager has determined that an IDDE event has occurred within city jurisdiction and an inspection has been performed:

(1) The burden of proof for determining the responsible party is presumed to have been satisfied if a person's, company's, or entity's name or other identification other than the original manufacturer is affixed or found:

(a) On three or more items of general rubbish or wastes of a solid nature except as noted below;

(b) On one or more items of construction debris or other wastes of a commercial nature;

(c) On one or more drums, buckets, or containers containing wastes of a gaseous, sludge, semi-solid or liquid nature; or

(d) There is documented and traceable evidence of disposal by parties other than the property owner, such as eyewitness reports, photos, or license plate information, suspicious activity reported to law enforcement, city environmental enforcement personnel or inspectors at or near the time of the event, or other similar documentary evidence.

(2) Presence of identifying information, such as labels and other markings, found on illegally disposed containers or other rubbish and waste is considered prima facie evidence of waste ownership. Barring such evidence, the property owner and/or person in control of the property is the presumed owner and disposer of such wastes.

(D) The burden of proof to establish a non-violation of this chapter, and transfer of costs for remedy of the situation, damages, and liabilities, shall shift to the responsible party, but shall not provide for a delay in addressing any imminent threat to the public health, safety, or environment as determined by the city.

(E) The NPDES Project Manager or City Engineer shall have the authority to require immediate cessation of illicit discharges.

(F) If, in the judgement of the City Engineer, NPDES Project Manager, or fire or law enforcement official, the general safety, public health, the environment, or the waters of the U.S. are at imminent risk, or the public interest otherwise requires that the site be cleaned rapidly, the city may require the responsible party (as determined above) to provide sufficient manpower and resources supplied by the owner to clean the site within 24 hours. If the responsible party or owner cannot be readily determined or contacted, or if the responsible party or property owner fails to remedy the IDDE event within the specified time, then the city will require corrective action be started at the site immediately, at the expense of the owner of the property, and recoup related costs by the means described in Section [15.33.37](#) and/or by any other legal means available.

*(Ord. 18-13)

ADMINISTRATION AND ENFORCEMENT

15.33.35 CITY ENGINEER; DUTIES AND DETERMINATIONS

(A) It shall be the responsibility of the City Engineer to produce, approve, make and retain records of all drainage plans, drainage reports, design analyses, design drawings, as-built drawings and maintenance schedules related to all drainage control, flood control and erosion control facilities constructed within city rights-of-way or easements.

(B) Applications for all land use changes shall address drainage control, flood control, storm water quality and erosion control in terms of the interactions of these parameters with other requirements and needs produced by the proposed land use changes.

(C) Requests for the platting of land for the purpose of subdivision or development shall be accompanied by appropriate drainage control, flood control and erosion control information.

(D)(1) The City Engineer shall not approve any plan or report pertaining to proposed construction, platting or other development where the proposed activity or change in the land affected would result in downstream capacity being exceeded.

(2) Downstream capacity is determined based on the assumption of fully developed watersheds. This assumption prevents "the first come, first served" approach where downstream development unduly constrains upstream development. Parameters used in the determination of downstream capacity include, but are not limited to:

(a) Channel stability;

(b) Crossing structure hydraulic capacity;

- (c) Reservoir capacity;
- (d) Hydraulic capacity of street, storm sewer or channel;
- (e) Public safety; and
- (f) Maintenance constraints.

(3) Planned public storm drainage facilities are assumed as in place in determining downstream capacity; provided, that construction funds are available and design has progressed to the point where capacity can be ascertained.

(E) Temporary facilities are only allowed and/or required on a case-by-case basis as determined by the City Engineer. The level of protection to be provided by temporary facilities shall be determined by considering:

- (1) The likelihood and consequences of a failure;
- (2) Length of time until permanent facilities will be in place; and
- (3) The acceptance of maintenance responsibilities and legal liabilities.

(F)(1) Requests for approval of construction, development and/or platting proposals to the City Engineer shall be accompanied by drainage control, flood control and erosion control information and/or commitments. This information must be prepared by a professional engineer, licensed in the State of New Mexico, unless the City Engineer waives this requirement.

(2) The particular nature, location and scope of the proposed development defines the degree of detail. One or more of the following levels of submittal may be required based on the following:

(a) *Conceptual grading and drainage plan.* A graphic representation of existing and proposed grading, drainage, flood control and erosion control information. The information should be of sufficient detail to determine project feasibility. The purposes of this plan are to check the compatibility of the proposed development within grading, drainage, flood hazard and erosion control constraints as dictated by on-site physical features as well as adjacent properties, streets, alleys and channels. Modifications to the comprehensive plan and the development of area plans, sector plans, site development plans and landscaping plans on tracts of five acres or more are appropriate applications of conceptual grading and drainage plans.

(b) *Drainage plans.* A short, detailed presentation required for approval of small, simple development approvals. Drainage plans are prepared in combination with the detailed grading plan and address both on-site and off-site drainage control, flood control, stormwater quality and erosion control issues. Drainage plans are required for building permits, site development plans and landscaping plans for developments involving less than five acres.

(c) *Drainage report.* A drainage report is a comprehensive analysis of the drainage control, flood control and erosion control constraints on and impacts resulting from a proposed platting, development or construction project. Drainage reports are required for subdivisions containing more than 10 lots or constituting five acres or more, platting or construction within a designated flood hazard area and for any platting or development adjacent to a major arroyo.

(d) *Erosion control plan.* An erosion control plan is usually incorporated into the drainage plan or drainage report. Erosion control plans address all phases of each project from initial grading through and including final occupancy. Phased projects required special attention. All construction projects, both public and private, within the jurisdiction of this chapter, unless specifically excluded, require an approved erosion control plan prior to start of construction.

(e) *Storm water quality design.* A storm water quality design includes a plan for storm water quality treatment for the storm water quality design volume, including the incorporation of design elements to manage the storm water quality design volume on site, or the basis for requesting and the proposed method for alternative treatment options. The storm water quality design should also address opportunities for the use of GI/LID practices, including, but not limited to, the use of rooftop discharge and passive water harvesting or other water conservation methods as permissibly allowed without water right by state water law and State Engineer interpretation. Storm water quality designs are required for all grading, construction, development, and redevelopment projects with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but are part of a larger common plan of development.

(G) Drainage control considerations specifically address safety, convenience and economics for both private property and public facilities.

(H)(1) The 100-year design storm is the 100-year six-hour storm as defined by the National Oceanic Atmospheric Administration (NOAA) and by the storm distributions for time and area as developed by the City Engineer. The 100-year storm has a one percent probability of occurring in any year. Watersheds with times of concentration greater than six hours will require the use of the 100-year 24-hour storm volumes and distributions. Detention basins with longer than six hours evacuation times shall use a 24-hour or longer storm volume and distribution.

(2) Design circumstances may require larger or smaller storm volumes. Examples are emergency spillways for dams and erosion control plans, respectively. The sources for rainfall data are current NOAA publications and the City Engineer. When the need for other design storms is apparent, the City Engineer will provide requirements concerning appropriate storms, frequencies and durations.

(I) The 100-year design storm does not apply for the storm water quality design storm. The storm water quality design storm shall be the ninetieth percentile storm event for newly developing properties and the eightieth percentile event for re-development properties. The definition for the ninetieth percentile and eightieth percentile storm water design volume shall be determined by the direction of the City Engineer or his designee. In no case shall it be less than the event as defined in the NPDES permit as related to post-construction storm water management. Nothing in this chapter shall preclude the definition of the storm water quality design storm to be greater than prescribed in the NPDES permit.

In the event of conflicting design storm events, the design storm with the larger associated runoff volume shall be utilized for flood and drainage control purposes. A storm event resulting in a discharge volume larger than the storm water quality design volume may be utilized for storm water management design and storm water quality purposes.

(J) The City Engineer shall, within 14 to 30 calendar days after the submission to him of a request in writing for the approval of a plat, development plan, drainage submittal or exemption, approve or deny the request and mail a copy of his decision to the applicant. If the request is denied, the reasons for the denial shall be stated in writing. Appeal of the decisions is as provided in Section [15.33.38](#).

(K) Grading or paving permits issued by the City Engineer or approvals by the City Engineer of drainage plans, erosion control plans or other improvement plans within the context of this chapter shall expire by limitation and become null and void if the work or improvement authorized is not commenced within 12 months of the approvals. In the event the authorized work or improvement is suspended or abandoned for a period of 12 months after the work or improvement is commenced, the permit or approval shall expire and become null and void. Before the work or improvement is recommenced, resubmittals must be made for approval by the City Engineer.

(L) The NPDES permit requires that submittals contain the signature of the principal executive official or ranking elected official or, alternatively, a duly authorized representative of that person, so long as that individual or position has an overall responsibility for environmental matters for the city. The duly authorized representative may either be a named individual or any individual occupying a named position. The signature authority may be delegated.

*(87 Code, § 8-7-12) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 01-020; Am. Ord. 18-13)

15.33.36 PROCEDURES; AMENDMENTS AND CRITERIA.

(A) Rules concerning procedures, criteria and standards shall be adopted, amended or abolished in compliance with the policies of this chapter and as provided by the procedures of this section. All rules and decisions shall be filed in the public records with the City Clerk.

(B) Proposed rule changes relating to procedures, criteria and standards pursuant to this chapter are initiated by the City Engineer; or any person may submit the proposed rule changes to the City Engineer. If a person other than an official of the city submits a proposal, there may be a processing fee set by a rule of the City Engineer.

(C) Prior to the adoption, amendment or repeal of any rule pursuant to this chapter (hereafter, referred to as "rule change"), the City Engineer shall:

- (1) Publish summary notice of the proposed rule change and solicit local comments in a newspaper of general circulation, which has its principal office in the city and also, where appropriate, in trade, industrial or professional publications as will reasonably give public notice to interested persons;
- (2) Send the proposed rule change to all city departments and solicit written comments;
- (3) Send the proposed rule change to any person or group filing written request for notice of all rule changes (a fee may be charged for requesting notices to cover reasonable city costs);
- (4) Solicit written comment on proposed rule changes for a period of 30 days from the date of their distribution and consider all comments before ruling on proposed rule changes; and
- (5) Upon adoption of a contested rule change, issue a concise statement of his principal reasons for the rule change and statement of positions rejected in adopting the rule change together with the reasons for the rejection. All persons who submit any writing to be considered in connection with the proposed rule change shall promptly be given a copy of the decision, by mail or otherwise.

(D) If a proposed rule change is approved by the City Engineer after receiving comments, notice shall be posted in a conspicuous place in City Hall and a reasonable effort shall be made to notify all interested parties. Proposed rule changes shall not take effect sooner than 30 days from the date of posting of notice or sooner than 90 days from original distribution for comment.

(E) In the event of an emergency, the Mayor may direct that rules concerning procedures, criteria or standards take effect immediately upon their posting and distribution. The Mayor's finding of an emergency and brief statement of the reasons for this finding shall be incorporated in the emergency rule change. Upon adoption of an emergency rule change which change shall remain in effect for longer than 60 days, notice to the public shall be given within seven days and opportunity for public comment shall be given in the manner required in this section for proposed rules.

(F) Appeal of the City Engineer's rule-making decisions is as provided in Section [15.33.38](#). Regular rules, adopted under subsection (D) of this section, do not take effect until an appeal is decided, if they are appealed prior to taking effect. Emergency rules, adopted under subsection (E) of this section, and regular rules, which have taken effect prior to appeal, are in effect until the time as they may be reversed by appeal action.

*(87 Code, § 8-7-13) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)

15.33.37 ENFORCEMENT.

(A)(1) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, the City Engineer or his authorized representative may enter the premises at all reasonable times to inspect the same or to perform any duty imposed upon him by this chapter; provided, that if the premises be occupied, he shall first present proper credentials and demand entry; and, if the premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry. If entry is refused or if the owner or other responsible person is not found, the City Engineer or his authorized representative shall proceed to obtain a search warrant through the municipal court or district court, upon oath or affirmation.

(2) The complaint shall:

- (a) Set forth the particular premises, or portion thereof, sought to be inspected;
- (b) State that the owner or occupant of the premises, or portion thereof, has refused entry;
- (c) State that inspection of the premises, or portion thereof, is necessary to determine whether it complies with the requirements of this chapter;
- (d) Set forth the particular provisions of this chapter sought to be enforced;
- (e) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion thereof, which constitutes a violation of this chapter; and
- (f) State that the complainant is authorized by the city to make the inspection.

(3) Each inspector shall be furnished with an identification card indicating his authority and must present same to the municipal court or district court for the purpose of this subsection (A) and to other persons, when requested to do so during the performance of his duties. No owner or occupant or any other person having charge, care, or control of any premises shall fail or neglect, after proper demand is made as herein provided, to promptly permit entry therein by the authorized inspector for the purpose of inspection and examination pursuant to this chapter.

(B) In the event that the City Engineer or NPDES Project Manager determines a recognized or observable spill, release, illicit discharge, illegal dumping, or illegal disposal constitutes an imminent

threat to the waters of the U.S. or its tributaries, to the SMS4, to the environment generally or to the public health or public safety, immediate entry to the property, under the direction of fire or law enforcement officials or state environmental officials, is granted for the purposes of stabilizing, containing, neutralizing or otherwise removing the imminent threat. The costs of such remedies may be imposed against the responsible party and/or the property owner.

(C) Where, after investigation, an order has been issued by the City Engineer to the owner of the property on which a violation has occurred and the order is not complied with, within such reasonable time as may be prescribed by the City Engineer, or if the responsible party or violator cannot be found or determined, the City Engineer may cause such remedies as are necessary to be made. The reasonable cost of such remedies shall constitute a lien against the property on which the violation occurred and was remedied. The lien shall be imposed and foreclosed in the manner provided in NMSA 3-36-1 through 3-36-6, as amended.

(D) Except as otherwise provided in this chapter, the City Development Director or his designee shall *administer this chapter pursuant to [Section 150.01](#) et seq.

*(87 Code, § 8-7-14) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 01-020; Am. Ord. 18-13)

15.33.38 APPEALS.

(A) Any applicant, aggrieved by a decision as to actions, provided for in Sections [15.33.07](#), [15.33.20](#), [15.33.35](#) and [15.33.36](#), of the City Engineer or absence of the decision, may appeal the decision to the governing body. The appeal shall be made by notice of appeal in writing addressed to the City Clerk and ?delivered, by copy, to the office of the City Engineer and **City Development Director** within 30 days after the date of the decision was mailed to the applicant.

(B) The City Clerk shall notify the applicant and the City Engineer of the date, time and place of the appeal hearing at least five days prior to the hearing date. The hearing shall be conducted not earlier than 10 days nor later than 30 days after the filing of the notice of appeal with the City Clerk. At the hearing, the governing body may consider the facts, exhibits and engineering principles as may be presented by the appellant or City Engineer or his designee, or of which the members may have knowledge or experience, and may affirm, reverse or modify the decision appealed from, and attach as conditions to their decision the requirements as in their opinion may be necessary or appropriate in compliance with the policies of this chapter to safeguard persons and property from storm water runoff.

(C) Each decision of the governing body shall be in writing and shall state reasons therefor. A copy of the ?decision shall be promptly mailed to the appellant and to the City Engineer and **City Development Director**.

(D) All appeals, other than those sections cited in subsection (A) of this section, and following procedures set forth in subsections (B) and (C) of this subsection, shall processed in accordance with procedures set *forth in [Section 150.08](#).

*(87 Code, § 8-7-15) (Ord. 84-113; Am. Ord. 91-037; Am. Ord. 18-13)