

LUNA COUNTY BUILDING CODE ORDINANCE NUMBER 75

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF MINIMUM STANDARDS FOR CONSTRUCTION IN LUNA COUNTY AND FOR THE PROVISION OF PENALTIES, CIVIL REMEDIES, SEVERABILITY AND EFFECTIVE DATE.

Whereas, the health, safety and welfare of the residents of Luna County require the regulation of the erection, construction, maintenance, enlargement, moving, removal, conversion, occupancy, equipment, use, height, demolition, alteration, and repairs, of all buildings and/or structures within Luna County; and

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

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

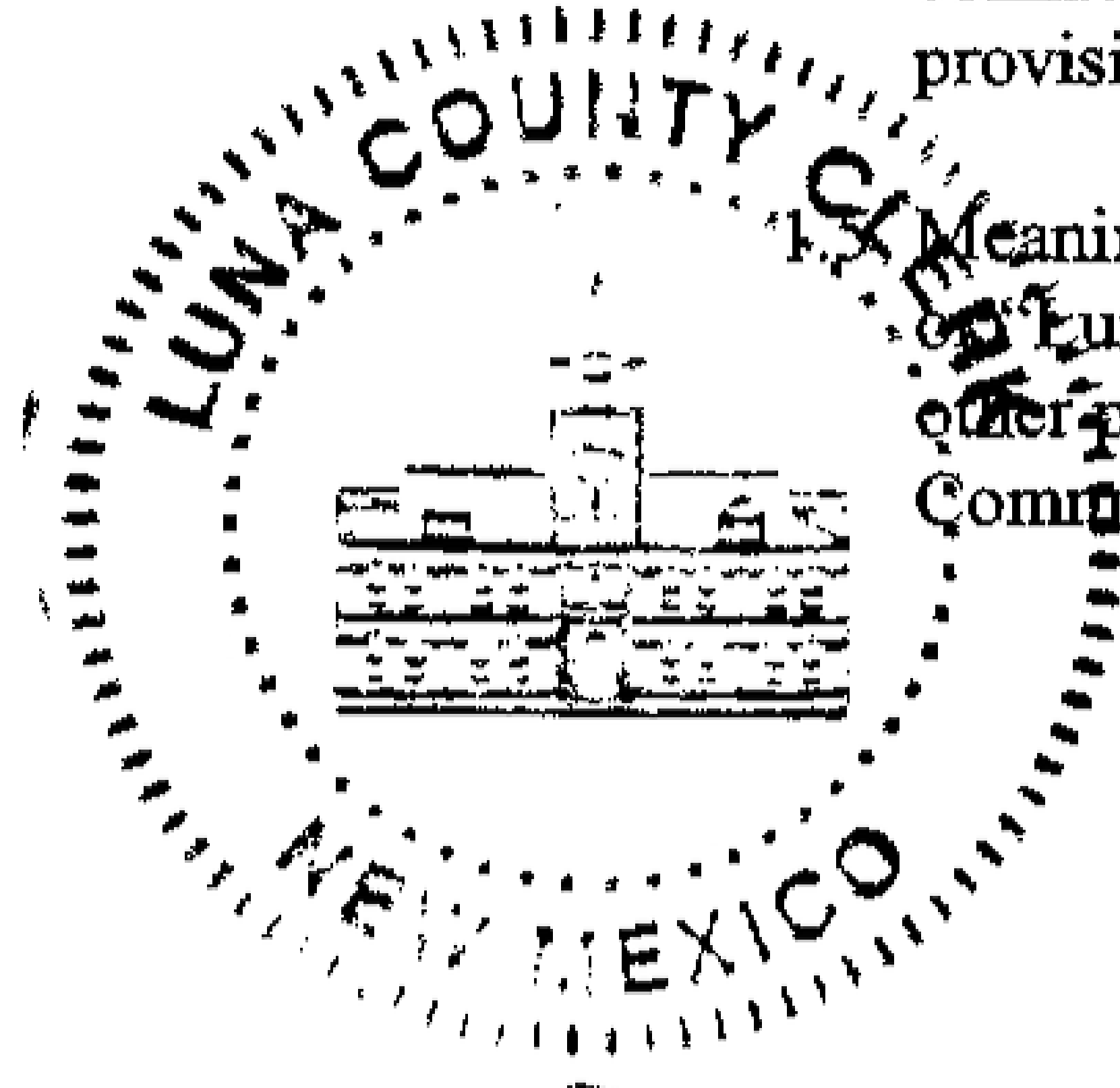
Whereas, Section 4-37-1 NMSA 1978 provides all counties are granted the same powers as municipalities, and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of Luna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

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

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

ARTICLE 1 GENERAL PROVISIONS

- 1.1 Short Title: This Ordinance shall be known as the "Building Code Ordinance", and shall be referred to herein as "this Ordinance".
- 1.2 Purpose: This Ordinance shall provide for the regulation of all construction, whether residential or commercial or other use, including any additions, expansions, repairs, remodel, or renovation to any building or structures in Luna County; provide for the issuance of permits for such work; establish minimum standards of workmanship and materials to be used in such work; and provide for the inspection, administration, penalties and enforcement of the regulation.
- 1.3 Jurisdiction: This Ordinance shall provide for the regulation of construction activities within the County, but not within the boundaries of municipalities.
- 1.4 Interpretation and Conflict: The regulations provided herein are held to be the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, or abrogate or annul any other valid ordinance or statute. In the event the provisions of this Ordinance conflict with other County rules, regulations or ordinances pertaining to the subject matter herein, the provisions of this Ordinance shall prevail.
- 1.5 Meaning of Terms: Wherever the terms "Luna County Planning Director", "County Planning Director", or "Luna County Planner" appear in this Ordinance they shall be read and understood as including any other person or position authorized by the County Manager or the County Board of County Commissioners to administer or otherwise carryout the requirements of the Ordinance.



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1.6 Definitions:

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

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

“Building Official” shall mean the officer, or official, or inspector or other designated authority charged with the administration and enforcement of any Code, or the building official’s duly authorized representative.

“Certificate of Compliance” shall mean a certificate issued to the property owner by the Luna County Code Compliance Officer or other designated County official, or a New Mexico State Building Official evidencing the fact that the requirements of this ordinance as set forth in this Ordinance, have been met.

“CID” State of New Mexico Construction Industries Division.

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

“Code Compliance Officer” shall mean the person designated by Luna County to enforce various County codes or ordinances.

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

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

“Contiguous” refers to adjacent lots or parcels of land sharing a boundary line.

“County” shall mean Luna County, New Mexico.

“County Commission” shall mean the Board of County Commissioners of Luna County.

“Development” the use of any land; the carrying out of any building activity including construction, reconstruction, conversion or enlargement of any building or structure; the making of any material change in the use, or intensity of use, or appearance of any building, structure, or land; the establishment of a commercial parking lot or the dividing of land into lots, blocks, or parcels, including the construction of roads, the installation of water, sanitary sewer and stormwater management facilities or other utilities.

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

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

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

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

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

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

“Fire Marshal” the Luna County Fire Marshall or a person discharging the duties of Fire Marshal.

“FPC” Fire Prevention Code.

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

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

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

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

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

“IBC” International Building Code.

“IRC” International Residential Code.

“Inspector” shall mean the Luna County Building Inspector or the Code Compliance Officer or a person duly delegated by the Luna County Building Inspector or the Code Compliance Officer, or a person instructed or requested by the Luna County Building Inspector or the Code Compliance Officer to provide a written report with respect to any matter set out in this Ordinance.

“LCBO” shall mean the Luna County Building Official; see also Inspector and Building Official.

“Lot” shall mean a parcel of land occupied or intended for occupancy by one main building together with its accessory buildings and uses customarily incidental to it.

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

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

“NFPA” National Fire Protection Association.

“NMBC” New Mexico Building Code.

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

“Occupancy” shall mean the purpose that a building, or part thereof, is used or intended to be used.

“Officer” shall mean the Code Compliance Officer of Luna County, the person designated by Luna County to administer and enforce various codes and ordinances.

“Owner” shall mean any person, agent, firm or corporation having a legal or equitable interest in the property.

“Parcel” shall mean a unit of land capable of being described by location and boundaries and not dedicated for public or common use.

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

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

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

“Property Occupant” shall mean any person who is occupying any property, whether by legal right or without legal right.

“Property Owner” shall mean the person who is the recorded owner of any property according to the records contained in the Luna County Clerk’s Office.

“Repair” shall mean the reconstruction, renewal, refinishing or refurbishing of all or any part of an existing building or structure, or property for the purpose of its maintenance.

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

“Sewage” shall mean residential liquid wastes, commercial liquid wastes, industrial liquid wastes, and any drainage, but does not include storm water.

“Sewerage System” shall mean a system for transporting sewage owned and operated by Luna County, a municipality or a private disposal system approved by the state of New Mexico Environmental Department.

“Shall” shall be construed as mandatory.

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

“Smoke Detector” an approved device that senses visible or invisible particles of combustion.

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

“Standards” the provisions and measures of physical conditions and occupancy set out in this Ordinance.

“Street or Road” shall mean all property dedicated or intended for public or private access to property, or subject to public easements therefore.

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

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

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

“UMC” Uniform Mechanical Code.

“UPC” Uniform Plumbing Code.

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

“Use” shall mean the use for which land or buildings are occupied or maintained, arranged, designed, or intended.

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

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

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

ARTICLE 2 BUILDING STANDARDS-GENERAL

2.1 Adoption of International Building code and Other Codes

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

- 2.1.1 International Building Code
- 2.1.2 International Residential Code
- 2.1.3 New Mexico Commercial Building Code
- 2.1.4 New Mexico Residential Code
- 2.1.5 National Electric Code
- 2.1.7 New Mexico Non-Load Bearing Straw Construction Building Code (Phase III)
- 2.1.8 New Mexico Plumbing Code
- 2.1.9 Uniform Plumbing and Mechanical Code
- 2.1.10 New Mexico Mechanical Code
- 2.1.11 New Mexico Electrical Code
- 2.1.12 New Mexico Electrical Safety Code (Phase III)
- 2.1.13 National Fire Protection Association, Fire Prevention Code
- 2.1.14 NFIP Regulations, 44 CFR, Section 60.3; Flood Insurance Study, and Flood Insurance Rate Map, effective October 19, 2010

Are hereby referred to, adopted and incorporated as fully as if set out verbatim herein and any amendments thereto, including the most recent additions, updates, revisions, or editions thereof.

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2.2 Copies of Codes Available for inspection

One or more copies of applicable codes adopted in Article 2.1 of this Ordinance shall be available for review and inspection during regular business hours in the Office of the LCBO.

2.3 Fee Schedule

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

2.4 Building Permits Required

Any construction, residential or commercial or other use, any additions, expansions, repairs, remodel, or renovation to any building or structure, to include site built and modular buildings or structures, shall have a building permit issued by the LCBO or a New Mexico State Building Official, and follow procedures required by the Codes adopted in this ordinance. The Building Permit must be displayed in a conspicuous place at the building site. If the LCBO, or State Building Official or the Luna County Code Compliance Officer determines that the property for which a permit has been requested is in violation, has outstanding violations, or may be in non-compliance with any part of this Ordinance, or the Luna County Subdivision Ordinance, or any other applicable county, state or federal regulation, the LCBO, State Building Official or the Luna County Code Compliance Officer may deny issuance of the permit until such time as the property has been deemed compliant.

2.5 Exceptions to Requirement for Permits

- a) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11.15 m²).
- b) Fences not over 6 feet high.
- c) Retaining walls that are not laterally supported at the top and that retain in excess of 36 inches (915mm) of unbalanced fill, unless supporting a surcharge or impounding class I, II or III-A liquids.
- d) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927L) and the ratio of height to diameter or width does not exceed 2 to 1.
- e) Sidewalks and driveways not more than 30 inches (762mm) above grade and not over any basement or story below and which are not part of an accessible route.
- f) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
- g) Temporary motion picture, television and theater stage sets and scenery.
- h) Prefabricated swimming pools accessory to a group R-3 occupancy, as applicable in the NMRBC, which are less than 24 inches (610mm) deep, do not exceed 5,000 gallons (19,000L) and are installed entirely above ground.
- i) Shade cloth structures constructed for nursery or agricultural purposes and not including services systems.
- j) Swings and other playground equipment accessory to one- and two-family dwellings.
- k) Window awnings supported by an exterior wall of group R-3, as applicable in the NMRBC, and group U occupancies.
- l) Movable cases, counters and partitions not over 5 feet, 9 inches (1,753mm) in height.
- m) Any work not otherwise regulated by the New Mexico construction codes and the CID rules.

2.6 Alternate Materials, Alternate Design and Methods of Construction

Pursuant to the International Building Code, and the International Residential Code, as amended from time to time, where materials, design and construction methods are specified in any of the Codes or Rules and Regulations adopted in Article 2 of this ordinance, alternate materials, design and methods of construction may be allowed provided any alternate has been approved, and is authorized by the Luna County Building Official (LCBO), or other authorized official.

The LCBO, or other authorized official, may approve any such alternate provided the LCBO, or other authorized official, is satisfied the proposed design is satisfactory and complies with the provisions of those codes and rules and regulations set out in Article 2 of this ordinance, and that the material and method of

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work proposed is at least the equivalent of that prescribed in any of the codes and rules and regulations set out in Article 2 of this ordinance.

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

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

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

2.7 Use of Waste Tires for Construction

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

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

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financial guarantee as circumstances warrant. The financial guarantee shall be released at the time the project is completed to the satisfaction of the Building Official; and,

- f) a permit for the proposed use is obtained from the Luna County Planning Department. The County shall not issue any permit unless and until it is fully satisfied that conditions set out in Article 2.6.1 a), b), c), d) and e) of this Ordinance have been fulfilled.

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

2.8 On-Site Utility and Development Requirements

Approved on-site utilities, to include water, sewer, and electricity are prerequisite to issuance of a building permit. All housing units shall be connected to a waste disposal system permitted and approved by the New Mexico Environment Department, a domestic water well permitted by the New Mexico State Engineer, or be connected to an approved potable water utility whether private or municipal. For purposes of this section:

- 2.8.1 There shall be no multiple users connected to a domestic water well nor to any on-site liquid waste disposal system except for properly permitted community water systems and properly permitted cluster wastewater systems, or as otherwise provided herein.
- 2.8.2 All electrical, plumbing, and gas hookups shall be inspected and approved by an inspector of CID, as the case may be prior to occupancy and before a Certificate of Occupancy will be issued by the LCBO, or other authorized official.
- 2.8.3 Any water/well, sewer/septic, electric, or natural gas/LP utility provider that connects service to individual parcels before the land owner holds a valid building permit is in violation of this ordinance and the service shall be disconnected.
- 2.8.4 Any waste disposal system must be approved by the New Mexico Environment Department.
- 2.8.5 No building permit or other permit shall be issued until and unless the applicant for such permit can show to the satisfaction of the Luna County Planner, that the applicant has legal access to a lot or parcel of land either by means of a public road or by means of a properly recorded easement, and such access shall provide reasonable physical ingress and egress to and from the parcel of land.

2.9 Smoke Detectors

Smoke detectors shall be required in all dwelling units to include site built, and modular, occupied or installed after the effective date of this Ordinance.

2.10 Flood Hazard Installation Requirements

The Luna County Floodplain Manager is hereby appointed the Floodplain Administrator to administer and implement the Flood Hazard Installation provisions of this Ordinance and other appropriate sections of 44 CFR pertaining to floodplain management. No residential, commercial or other use or development shall be located or installed in a flood-prone area, such as a Flood Hazard Area as designated by the National Flood Insurance Rate Map for Luna County, or in, on, or over the path of an arroyo, or floodway without the prior approval of the County Floodplain Manager and the issuance of a floodplain development permit. All development and all construction related to such development shall comply with the minimum standards as adopted by, or may be amended by, the Federal Emergency Management Agency (FEMA). A new or replacement water supply system or sanitary sewage system may be required within a designated flood hazard area which shall be designed to minimize or eliminate infiltration of flood waters into the system as well as discharges from the system into flood waters, and the on-site waste disposal system must be located so as to avoid impairment of them or contamination from them during flooding.

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2.11 Flood Hazard Installation Base Flood Elevation

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

- 2.11.1 The lowest floor level elevated at least one (1) foot above the base flood elevation where base flood elevations are determined.
- 2.11.2 The lowest floor level, with respect to site built structures, elevated two (2) feet above the highest adjacent grade in areas where no base flood elevations are determined.

2.12 Flood Hazard Minimum Fill Requirement

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

2.13 Storm Water, Grading, Drainage and Dust Control

- 2.13.1 No property owner shall alter the natural flow of storm water across their property in such a manner as to increase the flood hazard on other properties
- 2.13.2 Except for agricultural operations, no person shall clear any land of its natural vegetation without having in place and implementing a plan, approved by the Officer, to prevent soil, sand, dust, and building materials, construction waste or other materials from being blown by the wind from the said land. In the event the owner, lessee, occupant, or any agent or representative thereof having charge or control of such land fails or refuses to prevent such materials from being blown from the land by the wind, the County may take such corrective action as it deems advisable and the cost of doing so shall constitute a lien on the subject land.

2.14 Lighting

- 2.14.1 Lighting fixtures, lamps and their supports and connections shall be maintained in a safe and complete condition, without visible deterioration.
- 2.14.2 All properties that are being developed, remodeled, refurbished, or rehabilitated shall comply with the Night Sky Protection Act, NMSA 1978, § 74-12-1 through § 74-12-11.

2.15 Roofs

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

2.16 Set-Back

- 2.16.1 All permitted structures shall have a twenty-five (25) foot set-back from the front property line, a five foot set-back from the side property line, and a five (5) foot set-back from the rear property line.

ARTICLE 3 ADMINISTRATION AND ENFORCEMENT

This Ordinance and all codes, rules, regulations and other provisions set out in said Ordinance shall be enforced by the Luna County Building Official (LCBO), who is certified by the State of New Mexico Construction Industries Division, and has such powers and duties as are enumerated in and set forth in the current provisions of the Codes adopted in Article 2 of this Ordinance, or by a Luna County Code Compliance Officer. Article 2 of this Ordinance may be enforced by an inspector employed by the State of New Mexico Construction Industries Division. The LCBO shall not enforce any code provisions pertaining to gas service installations or related matters.

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

3.2 Notice of Violation

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

- a) Notice of Violation. (i) If, after inspection, or the observation of any County or State employee, the Officer is satisfied that a violation does exist, the Officer shall serve, or cause to be served by personal service, or send by prepaid registered mail to the owner of record of the property, or to the occupant or tenant of the property, or both, and to all persons shown by the records to have an interest in the property, a Notice of Violation setting out the particulars of the violation(s). The Notice shall establish that the abatement of the violation(s) by the owner, or occupant or tenant, or both, shall begin in not more than ten (10) days and shall be completed in not more than ninety (90) days after service of the Notice. The Notice shall be served at the owner's or occupant's or tenant's last known address; (ii) In the event a violation of this ordinance constitutes an immediate danger to the public health and safety, the notice provisions of this subsection shall not apply, and the violation may be prosecuted and abated immediately.
- b) Placard. If the Officer is unable to achieve service under Article 3.2.1 a) he/she may place a placard containing the terms of the Notice in a conspicuous place on the property or building, and the placing of the placard shall be deemed to be sufficient service of the Notice on the Owner or other persons.
- c) Extension of Time Frame for Abatement. Where the Officer is satisfied that there is good and sufficient reason to extend the time frame for abatement of the violation(s), he/she may extend the time frame set out in Article 3.2.1 a) above for a period of time not to exceed forty-five (45) days beyond the time period set out in the original Notice.
- d) Failure to Correct. In the event the owner, occupant or tenant of the property where the violation exists, has failed to correct the violation(s) within the prescribed period of time, then the Officer shall issue a citation or file a complaint charging violation of this Ordinance with the Magistrate Court, or other appropriate court of jurisdiction, demanding that the owner of the property, or the occupant, or both, be held to answer to the Court for the violation.

3.3 Certificate of Occupancy/Compliance

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- 3.3.1 All buildings or structures, to include site built, and modular, whether titled or untitled are subject to this Ordinance and shall, prior to use, be inspected by the LCBO, or other authorized official.
- 3.3.2 Following the final inspection of a building or structure, the Officer will issue a Certificate of Occupancy/Compliance, when the building or structure is in compliance with the standards of this Ordinance.
- 3.4 Prohibition
- 3.4.1 The Code Compliance Officer may issue a Notice prohibiting the occupancy of any unsafe or uninhabitable building.
- 3.5 Citation Uniform Non-Traffic
- 3.5.1 The use of uniform non-traffic citation forms is authorized for use in enforcement of this Ordinance, except as otherwise provided.
- 3.6 Penalties and Remedies

Any person violating or failing, or refusing to comply with the provisions of this Ordinance and the Codes adopted may be prosecuted in any court of competent jurisdiction within the County, and shall be punished by a fine of not more than three hundred dollars (\$300), the Board of County Commissioners may apply to the District Court for appropriate injunctive relief to compel compliance by any person whose conduct violates any provision of this Ordinance. The County shall be entitled to recover a reasonable attorney's fee if required to enforce this Ordinance through the issuance of a demand letter, or in enforcing any portion of this Ordinance in any Court of competent jurisdiction. After the effective date of this ordinance, all violations are subject to issuance of a citation.

3.7 Variance

- 3.7.1 It is the intention of the Board of County Commissioners that all variances be temporary in duration. The County Commission may grant a variance to the regulations set out in Article 4.2 of this Ordinance for the sole purpose of permitting one accessory dwelling unit on any property in Luna County on the following grounds only:
- a) To provide living accommodation to an immediate member of the family of the owner-occupant of the principal dwelling unit which family member requires immediate and urgent care because he/she is disabled, physically or mentally infirm, has a disease which is or will become debilitating, or is incapable of being gainfully employed because of their condition. A certificate or letter signed by a physician licensed in the State of New Mexico attesting to the medical condition and the need for care of the family member who will occupy the accessory dwelling unit shall be required by the County Commission as proof of the medical condition.
- 3.7.2 The County Commission shall not grant any variance which will cause the County to incur or absorb any costs. In granting any variance the County Commission may impose such conditions as will:
- a) Substantially secure the objectives of the standards set out in this Ordinance;
 - b) Not adversely affect the health safety and general welfare of the general public and the immediate property owners;
 - c) Impose whatever time limits may be reasonable and appropriate in the circumstances. Any variance granted shall be for a period of time not to exceed three (3) years from the date of granting such variance. If necessary, the variance may be renewed prior to the expiration of the term of the variance upon written application by the owner-occupant. Such renewal shall be for a period of

time not to exceed three (3) years. All variances granted by the County Commission must be renewed prior to the expiration of either the initial time limit imposed by the County Commission or any renewal period granted by the County Commission. There shall be no limits on the number of renewals provided the reason for the initial variance remains valid;

- d) Impose conditions on the type, quality and design of any proposed construction;
- e) Impose height limits;
- f) Require buffering in the form of fencing and/or vegetation to protect and shield adjacent land uses;
- g) Ensure compatibility with other development in the adjacent area. Compatibility as used here shall include, but is not limited to the following: land use, height, scale, density, water supply and liquid waste disposal facilities; and,
- h) Accomplish any other purpose and effect deemed advisable and appropriate by the County Commission.

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

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

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The County Board of Commissioners will then decide the matter during its regular business meeting.

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

ARTICLE 4 GENERAL PROVISIONS

4.1 Conformance Mandatory

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

4.2 One Main Dwelling Unit per Lot

Every dwelling unit hereafter erected, enlarged or structurally altered shall be located on a "lot" as defined in Article 1, Section 1.6, Definitions of this Ordinance, and in no case shall there be more than one main dwelling unit on one lot. Land that is part of one lot and that is not in excess of the area requirements for that lot shall not be used to satisfy the area requirements of any other lot.

ARTICLE 5 SEVERABILITY

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

ARTICLE 6 EFFECTIVE DATE AND REPEAL

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

Adoption of this Ordinance hereby repeals the following provisions of Luna County Ordinance No. 37, Second Revision: Article 3; Article 6, Section 6.3, Sub-section 6.3.3; Article 6, Section 6.3, Sub-section 6.3.6; Article 6, Section 6.5; Article 6, Section 6.6; Article 6, Section 6.8, Sub-section 6.8.9; Article 7; and Article 16, Section 16.2.

PASSED, APPROVED AND ADOPTED this 12th day of August, 2010,

Board of County Commissioners,
Luna County, New Mexico.

By: _____

R. Javier Diaz, Chairman



Karen Smyer, County Clerk

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