

**VILLAGE OF MILAN, NEW MEXICO**  
**CODE OF ORDINANCES**

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## **PUBLISHERS'S ACKNOWLEDGMENT**

In the publication of this Code of Ordinances, every effort was made to provide easy access to local law by municipal officials, the citizens of this municipality, and members of the business community.

We want to express our grateful appreciation to all municipal officials for their untiring efforts in the preparation of this Code of Ordinances.

**AMERICAN LEGAL PUBLISHING CORPORATION**

Stephen G. Wolf, Esq.  
President



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**10. GENERAL PROVISIONS**





## CHAPTER 10: GENERAL PROVISIONS

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### § 10.01 TITLE OF CODE.

This 2007 codification of ordinances by and for the Village of Milan, New Mexico, shall be designated as the "Village of Milan Code of Ordinances" and may be cited herein as "this code" or "this code of ordinances."

### § 10.02 INTERPRETATION.

Unless otherwise provided herein or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

### § 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I, compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

### § 10.04 CAPTIONS.

Headings, captions and statutory references used in this code other than the title, chapter, subchapter and section number are employed for reference purposes only and shall not be deemed a part of the text of any section.

### § 10.05 DEFINITIONS.

(A) (1) Words and phrases shall be taken in their plain, ordinary and usual sense.

(2) However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

## Milan - General Provisions

(B) For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPOINTED OFFICIAL.** Any person appointed to a board, committee, commission or advisory body, in accordance with this code of ordinances. **APPOINTED OFFICIALS** are not subject to the provisions of the village personnel ordinance and shall serve at the pleasure of the Mayor.

**BOARD OF TRUSTEES.** The governing body of the Village of Milan, New Mexico.

**CLASSIFIED EMPLOYEE.** A person employed by the village who is entitled to grievance in accordance with the personnel policies and work rules and who is not exempt under the Fair Labor Standards Act.

**CODE or CODE OF ORDINANCES.** The village's code of ordinances, as modified by amendment, revision and adoption of new chapters, subchapters or sections.

**COUNTY.** Cibola County, New Mexico.

**ELECTED OFFICIAL.** Those village officials elected under the laws of the state, specifically, the Municipal Judge and members of the governing body.

**EX OFFICIO.** A person assigned to a standing board or committee by virtue of their office. The person shall not be permitted to make or second motions or to vote on any matter, or to be counted for the purpose of a quorum.

**GOVERNING BODY.** The members of the Board of Trustees. The corporate authority of the municipality is vested in this body.

**INTERPRETATION.** For the purpose of this code and ensuing chapters and appendices and when not inconsistent with the context:

(a) Words used in the present tense include the future;

(b) Words in the future tense include the present;

(c) Words in the plural include the singular;

(d) Words in the singular include the plural;

(e) The word "shall" is always mandatory and not merely directory; the word "may" is permissive; and

(f) The impersonal pronouns "he," "him" and "himself" shall denote either the feminine or the masculine gender.

**MONTH.** A calendar month.

**MUNICIPAL OFFICER.** Any appointed employee. A **MUNICIPAL OFFICER** is limited to a **DEPARTMENT DIRECTOR**.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an **OATH** and, in these cases, the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION or DEPARTMENT.** An officer, office, employee, commission or department of the village unless the context clearly requires otherwise.

**PERSON.**

(a) Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee or receiver; and

(b) Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER**, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PRECEDING** or **FOLLOWING.** Next before or next after, respectively.

**SIGNATURE** or **SUBSCRIPTION.** Includes a mark when the person cannot write.

**STATE.** The State of New Mexico.

**VILLAGE.** The Village of Milan, New Mexico.

**VILLAGE MANAGER.**

(a) Officer of the village, appointed by majority vote of the governing body, who exercises administrative control and supervision over the village and hires or appoints directors of all village departments.

(b) Where applicable, the term **VILLAGE MANAGER** means those persons whose authority has been granted by the **VILLAGE MANAGER.**

**WRITTEN.** Any representation of words, letters or figures, whether by printing or otherwise.

**YEAR.** A calendar year unless otherwise expressed.

**§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of the village shall be by the following rules unless the construction is plainly repugnant to the intent of the governing body or of the context of the same ordinance:

(A) **AND** or **OR.** Either conjunction shall include the other as if written "and/or," if the sense requires it.

(B) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requirement shall be satisfied by the performance of the act by an authorized agent or deputy.

(C) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

**§ 10.07 SEVERABILITY.**

The provisions of this code of ordinances are severable, and if any provision, subchapter, section, division, clause, sentence or part thereof is held to be illegal, invalid, unconstitutional or inapplicable, to any person, persons, circumstances, situation or otherwise, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining sentences, clauses, divisions, sections, subchapter or parts of this code of ordinances, or their applicability to other persons, circumstances or situations.

**§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever, in one section, reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

**§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the village exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

**§ 10.10 ERRORS AND OMISSIONS.**

(A) If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published.

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

**§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state/federal laws, shall be the official time within the village for the transaction of all village business.

**§ 10.12 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) (1) The time within which an act is to be done shall be computed by excluding the first day and including the last.

(2) If the last day be a Saturday, Sunday or village holiday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

(A) This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced.

(B) All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.14 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

**§ 10.15 EFFECTIVE DATE OF ORDINANCES.**

An ordinance shall not become effective until 5 days after it has been published unless passed and approved as an emergency measure, in which event it shall become effective immediately following publication or at a subsequent date determined by the governing body.

**§ 10.16 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in

force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto unless otherwise expressly provided.

(B) No suit, proceeding, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall, in any way, be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision unless it is expressly provided.

**§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the governing body shall desire to amend any existing chapter, subchapter or section of this code, the chapter, subchapter or section shall be specifically repealed and a new chapter, subchapter or section, containing the desired amendment, substituted in its place.

(B) (1) Any ordinance which is proposed to add to the existing code a new chapter, subchapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter, subchapter or section.

(2) In addition to the indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

**§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.**

(A) As histories for the code sections, the original ordinance and amending ordinances, if any, are listed. Example: (Ord. 93, passed 1-20-1980; Am. Ord. 98, passed 1-20-1990; Am. Ord. 99, passed 1-20-2000)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example:

**§ 33.025 JURISDICTION.**

The Municipal Court shall have jurisdiction over all offenses and complaints under the ordinances of the village and may issue subpoenas and warrants and punish for contempt, and the Municipal Court shall have jurisdiction over other matters as may be authorized pursuant to state law.

(NMSA § 35-14-2, 1978) (1979 Code, § 14-26) (Ord. 772, passed 12-30-1986)

(2) If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information. Example:

**§ 30.05 LEGISLATION GENERALLY.**

The passage of ordinances and other legislation by the Board of Trustees shall be in conformity with state law. (1979 Code, § 2-47)

*Statutory reference:*

*Ordinances, see NMSA § 14-16, 1978*

**§ 10.99 GENERAL PENALTY.**

(A) *Maximum penalty.* Unless a lesser maximum penalty or a specific penalty is established by ordinance for a particular offense, the maximum penalty for the violation of any municipal ordinance shall be as follows:

(1) Except for those violations of ordinances described in divisions (2) and (3) of this section, a fine of not more than \$500 or imprisonment for not more than 90 days or both;

(2) For violations of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than \$999 or imprisonment for not more than 179 days or both; and

(3) For violations of an industrial user wastewater pretreatment ordinance as required by the United States Environmental Protection Agency, a fine of not more than \$999 per day for each violation.

**(B) Mandatory fees collected upon conviction.**

(1) In addition to any fine or imprisonment described in division (A) of this section, there is imposed upon any person convicted of violating any municipal ordinance for which the penalty carries a potential jail term or any ordinance relating to the operation of a motor vehicle the following mandatory fees:

- (a) A corrections fee of \$20;
- (b) A judicial education fee of \$2;
- (c) A court automation fee of \$6; and
- (d) A crime lab fee (for DWI's only)

of \$65.

(2) As used in this section, **CONVICTED** means the defendant has been found guilty of a criminal charge by the Municipal Judge, either after trial, a plea of guilty or a plea of nolo contendere, or he or she has elected to pay a penalty assessment in lieu of trial.

**(C) Disposition and use of fees collected.**

(1) All corrections fees collected shall be deposited in a special fund in municipal treasury and shall be used for: municipal jailer training; for construction planning; construction, operation and maintenance of the municipal jail; for paying the cost of housing municipal prisoners in a county jail; or detention facility or housing juveniles in a detention facility; for complying with match or contribution requirements relating to jails or juvenile facilities; providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing; defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities; or providing electronic monitoring system.

(2) A municipality may credit the interest collected from fees deposited in the special fund pursuant to division (C)(1) of this section to the municipality's general fund.

(3) All judicial education fees collected shall be remitted monthly to the State Treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court personnel.

(4) All court automation fees collected shall be remitted monthly to the State Treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation system shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information system council.

(5) All crime lab fees collected shall be remitted monthly to the administrative offices of the court which submits an appropriate portion of the fees to the State Scientific Laboratory Division. The SLD

uses these funds to support the breath alcohol and drug testing and training done pursuant to the Implied Consent Act.

(Ord. 115, passed 6-21-1983, Am. Ord. 159, passed 7-21-1993; Am. Ord. 166, passed 6-22-1994; Am. Ord. 183, passed 11-17-1998; Am. Ord. 198, passed 5-15-2003)





**TITLE III: ADMINISTRATION**

Chapter

- 30. VILLAGE OFFICIALS**
- 31. MUNICIPAL COURT**
- 32. FIRE DEPARTMENT**
- 33. TAXATION**
- 34. PERSONNEL**



**CHAPTER 30: VILLAGE OFFICIALS**

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**GENERAL PROVISIONS**

**§ 30.01 CREATION OF APPOINTED OFFICES.**

The following appointive offices in the Village of Milan are hereby created: Clerk-Treasurer; Police Chief; and Fire Chief.  
(Ord. 1, passed 4-4-1957)

**§ 30.02 CREATION OF ELECTIVE OFFICES.**

The following elective office for the Village of Milan is hereby created: Municipal Judge.  
(Ord. 1, passed 4-4-1957)

**§ 30.03 OFFICES APPOINTED BY MAYOR.**

The Mayor shall appoint the Clerk-Treasurer and Police Chief with the approval of the Board of Trustees.  
(Ord. 1, passed 4-4-1957)

**§ 30.04 MUNICIPAL JUDGE.**

The office of Municipal Judge shall be filled by election at the regular village election, and the person so elected shall hold office for a period of 4 years.  
(Ord. 1, passed 4-4-1957)

***Cross-reference:***

*For provisions regarding a vacancy in office, see § 31.04*

**§ 30.05 OTHER OFFICES.**

All other offices and employees shall be appointed by the Mayor with the approval of the Board, unless otherwise provided by law or ordinance.

(Ord. 1, passed 4-4-1957)

**§ 30.06 TERM OF APPOINTIVE OFFICES.**

The term of all appointive offices not otherwise fixed by law or ordinance, shall be 2 years.

(Ord. 1, passed 4-4-1957)

**§ 30.07 VACANCY IN APPOINTIVE OFFICE.**

A vacancy in an appointive office shall be filled in the same manner as the original appointment.

(Ord. 1, passed 4-4-1957)

**§ 30.08 SALARY.**

All of the above appointive or elective offices shall receive a salary as is fixed by the Board of Trustees from time to time by resolution.

(Ord. 1, passed 4-4-1957)

**§ 30.09 DUTIES OF CLERK-TREASURER, POLICE CHIEF, FIRE CHIEF AND MUNICIPAL JUDGE.**

It shall be the duty of the Clerk-Treasurer, Police Chief, Fire Chief or Municipal Judge, in addition to the duties imposed upon them by the general laws of the State of New Mexico to abide by all requirements and carry into effect all orders or demands issued by the Board of Trustees from time to time by resolution.

(Ord. 1, passed 4-4-1957)

**§ 30.10 CLERK-TREASURER BOND.**

The Clerk-Treasurer shall before entering upon his or her duties, furnish a bond with sureties to be approved by the Board of Trustees in the penal sum of

\$5,000, conditioned upon the faithful performance of the duties required of him or her by the general laws of the State of New Mexico, and by the provisions of this chapter, and any other ordinances or resolutions promulgated by the Board of Trustees from time to time defining the duties.

(Ord. 1, passed 4-4-1957)

**§ 30.11 MAYOR'S TERM.**

The Mayor shall be elected for a term of 4 years and shall be elected at the regular municipal election held on the first Tuesday in March of every fourth year beginning with 3-5-1974.

(Ord. 70, passed 12-18-1973)

**§ 30.12 BOARD OF TRUSTEES TERM.**

The members of the Board of Trustees shall be elected for a term of 4 years and further, the term of office of the Trustees shall be staggered so that the terms of office of 1/2 of the members of the Board of Trustees shall expire every 2 years. One-half of the Board of Trustees shall be elected at the regular municipal election held on the first Tuesday in March of 1974 and thereafter 1/2 of the Board shall be elected on each even numbered year.

(Ord. 70, passed 12-18-1973)

***VILLAGE MANAGER*****§ 30.25 ESTABLISHMENT OF POSITION.**

The establishment of the position of Village Manager as provided in Ordinance No. 92 be and is hereby affirmed.

(Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

**§ 30.26 APPOINTMENT; QUALIFICATION; COMPENSATION.**

(A) (1) The Mayor, subject to confirmation by a majority of the members of the Board of Trustees shall appoint or nominate a Village Manager. The Mayor shall appoint or nominate a Village Manager within 30 days of the earliest of the following:

(a) A written notice of intent to resign sent by the Village Manager to the Mayor and Trustees;

(b) The resignation of the Village Manager; or

(c) The termination of the Village Manager.

(2) The Board of Trustees shall immediately conduct a special meeting to act on the confirmation of the Mayor's appointee. If the Board of Trustees fails to confirm the appointee, the Mayor shall nominate or appoint a person to be Village Manager within 10 days of the Trustees action rejecting the previous appointee. The appointment process as provided above, shall continue until a Village Manager is confirmed by the Board of Trustees.

(B) The Board of Trustees shall enter into an employment contract with the Village Manager which shall establish, among other matters, compensation and benefits, and shall be consistent with the provisions of this chapter.

(C) The Village Manager shall be appointed solely on the basis of executive and administrative qualifications. The Village Manager need not be a resident of the village or state at the time of appointment. After appointment, the Village Manager may reside outside of the village while in office without the prior approval of the Board of Trustees.

(D) The Village Manager shall not be appointed for any definite term and shall serve at the pleasure of the Board of Trustees as provided by the law. (Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

**§ 30.27 POWERS AND DUTIES.**

(A) The Village Manager shall be the chief administrative officer of the village, in charge of the day-to-day administrative affairs of the village, and responsible to the Mayor and Board of Trustees, as appropriate, for the administration of all village affairs placed in the Manager's charge by the Board of Trustees.

(B) The Village Manager shall:

(1) Subject to approval of Board of Trustees as provided by law, and subject to rules and regulations set by the Mayor and Board of Trustees, employ, supervise, discipline and discharge all persons engaged in the employment and administrative services of the village;

(2) Direct and supervise the day-to-day administration of all employees, departments, offices and agencies of the Village of Milan, except as otherwise provided by this chapter;

(3) Attend all meetings of the Board of Trustees. The Village Manager shall have the right to take part in discussion but shall not be entitled to vote;

(4) Cause all ordinances, and lawful actions of the Mayor and Board of Trustees, which are subject to enforcement by the Village Manager or by officers and employees subject to the Manager's direction and supervision, to be faithfully executed;

(5) Prepare and submit the annual budget and capital program to the Mayor as provided by law;

(6) Submit to the Mayor and Board of Trustees, and make available to the public, a complete report on the finances and administrative activities of the Village of Milan as of the end of each fiscal year;

(7) Under the direction of the Board of Trustees, manage and control all property, real and personal, belonging to the village;

## Milan - Administration

(8) Make any other reports as the Mayor or Board of Trustees may require concerning the operations of the village departments, offices and agencies subject to the Village Manager's direction and supervision;

(9) Keep the Mayor and Board of Trustees fully advised as to the financial condition and future needs of the village;

(10) Make recommendations to the Mayor and Board of Trustees concerning the affairs of the village;

(11) Provide staff support services for the Board of Trustees;

(12) Be the procurement officer of the village; but the Village Manager shall be entitled to delegate all or part of this function to 1 or more village employees; and

(13) Perform any other duties as are specified in this chapter or may be required by the Board of Trustees.  
(Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

### § 30.28 DUTIES OF MAYOR.

(A) The Mayor shall be a member of the governing body entitled to cast a vote only in the event of a tie among the Board of Trustees.

(B) The Mayor shall:

(1) Cause all ordinances, resolutions, regulations, and policies adopted by the Board of Trustees to be obeyed;

(2) Preside at meetings of the Board of Trustees;

(3) Be the chief executive officer of the village and shall exercise all administrative and executive powers except to the extent that those powers are vested in and conflict with the duties of the Village Manager;

(4) After appointment by the Board of Trustees, represent the village in intergovernmental relationships;

(5) Perform other duties and exercise any other powers as specified in village ordinances and resolutions, and directed by the Board of Trustees;

(C) The Mayor shall be recognized as the head of the village government for ceremonial purposes, for those purposes of responding to civil emergencies and by the Governor for purposes of military law.  
(Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

### § 30.29 ABSENCE OF VILLAGE MANAGER.

During periods that the Village Manager is absent from the village, the Mayor shall perform all tasks and duties assigned to the Village Manager. Absence of the Village Manager is specifically defined as a period where there is a vacancy in the position of Village Manager or when the Village Manager is absent from work for more than 30 consecutive calendar days.  
(Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

### § 30.30 EMPLOYMENT STATUS.

The Village Manager shall not come within or be subject to the Personnel Chapter, Chapter 34 of the Village of Milan. The Village Manager shall have the duties as set forth by state statute, ordinance, contract between the village and the Village Manager, and any other duties as the Board of Trustees from time to time shall designate.

(Ord. 182, passed 10-20-1998; Am. Ord. 186, passed 2-4-2000)

**COMPENSATION**

**§ 30.40 COMPENSATION OF MAYOR.**

(A) The Mayor of the Village of Milan shall receive annual compensation or salary in the sum that is equal to 66% of the amount received by Cibola County Commissioners as allowed by NMSA § 4-3A-10, (1995 Supp.).

(B) From time to time the Mayor's annual salary shall automatically increase by an amount equal to 66% of any increase in salary of the Cibola County Commissioners when increased by appropriate legislation.

(C) The initial increase in the Mayor's salary shall occur 30 days after the next election for Mayor in the Village of Milan. Any subsequent increase in the Mayor's salary shall become effective 30 days after the election for Mayor which next occurs after the state legislation increases the salary for Cibola County Commissioners.

(D) The Mayor's salary shall be payable in monthly installments.  
(Ord. 101-A, passed 8-19-1980; Am. Ord. 172, passed 1-17-1996; Am Ord. 209, passed 11-17-2005)

**§ 30.41 COMPENSATION FOR MEMBERS OF THE BOARD OF TRUSTEES.**

(A) The Trustees of the Village of Milan shall receive annual compensation or salary in the sum that is equal to 50% of the amount received by the Mayor.

(B) The Trustees annual salary shall increase by an amount equal to 25% of any increase in salary of the Cibola County Commissioners when increased by appropriate legislation.

(C) The initial increase in the Trustee's salary shall occur 30 days after the next election for Trustee in the Village of Milan. Any subsequent increase in the Trustees salary shall become effective 30 days after the election for Trustee which next occurs after the state legislation increases the salary for Cibola County Commissioners.

(D) The Trustees salary shall be payable in monthly installments.  
(Ord. 101-A, passed 8-19-1980; Am. Ord. 172, passed 1-17-1996; Am Ord. 209, passed 11-17-2005)

**§ 30.42 PARTICIPATION IN RETIREMENT PLANS.**

The Mayor of the Village of Milan and each of the Trustees may, at their election, participate in any retirement plan such as PERA and/or medical plan that the Village of Milan has available and offers to its employees. The Mayor and/or Trustees shall inform the Village Clerk of their election to participate in either/or both plans. Upon election to participate the Village Clerk shall withhold from that persons salary the entire monthly contribution necessary for that person to participate in the retirement, or medical plan. The Village of Milan shall not pay any portion of the sum necessary for the Mayor or Trustees to gain retirement and/or medical benefits.  
(Ord. 174, passed 11-20-1996)





**CHAPTER 31: MUNICIPAL COURT**

Section

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- 31.12 Bond
- 31.13 Training requirements

*Jurisdiction*

- 31.25 Jurisdiction

*Compliance with New Mexico State Statute and Rules of Procedure Promulgated by the Supreme Court of New Mexico*

- 31.40 Compliance with state law

**ESTABLISHMENT**

**§ 31.01 JUDICIAL OFFICE CREATED.**

There is hereby created a Municipal Court in and for its municipality which shall be presided over by a Municipal Judge.  
(Ord. 162, passed 4-20-1994)

**§ 31.02 QUALIFICATIONS.**

A person shall be qualified to hold office of Municipal Judge if the person:

(A) Is qualified elector of the village, as defined in NMSA § 3-1-2K, 1978, as amended;

(B) Has been awarded a high school diploma or the equivalent thereof;

(C) Has taken the oath of office after having been issued a certificate of election "of having been" duly appointed to fill a vacancy; and

(D) Has furnished a surety bond as required by this chapter.  
(Ord. 162, passed 4-20-1994)

**§ 31.03 ELECTION.**

(A) The Municipal Judge shall be elected for the term of 4 years and shall serve until his or her successor is duly elected and qualified.

(B) The next election for Municipal Judge shall occur at the regular municipal election to be held in the month of March, 1996.

(C) The Municipal Judge shall be elected in the manner provided by state law and the candidate for Municipal Judge receiving the highest number of votes shall take office at the same time as other elected municipal officers, upon meeting the qualifications for the office.  
(Ord. 162, passed 4-20-1994)

**§ 31.04 VACANCY IN OFFICE.**

In the event that the office of Municipal Judge becomes vacant, the vacancy shall be filled by the appointment by the governing body of a person qualified to hold the office until the next regular municipal election at which time a Municipal Judge shall be elected for a 4-year term.  
(Ord. 162, passed 4-20-1994)

**§ 31.05 OATH OF OFFICE.**

The Municipal Judge shall, prior to taking office, take an oath of office in which the judge shall swear to uphold the constitution and laws of the United States of America and the State of New Mexico, and the ordinances of the municipality, and to faithfully and impartially discharge and perform all of the duties of the office.  
(Ord. 162, passed 4-20-1994)

**§ 31.06 COMPENSATION.**

The salary of the Municipal Judge to be elected at the regular municipal election on 3-2-1996, and at all future regular municipal election, unless and until changed by ordinance adopted prior to any future election, shall be \$10,400 per annum. The Municipal Judge shall have PERA and be entitled to health insurance as other employees, but is otherwise an exempt elected official.  
(Ord. 162, passed 4-20-1994)

**§ 31.07 TEMPORARY MUNICIPAL JUDGE.**

During the temporary incapacity of absence of the Municipal Judge, under circumstances not tantamount to or constituting a vacancy in office, including but not limited to vacations, temporary absences, unavailability or incapacity, the Municipal Judge before absenting himself or herself, may select, or upon his or her failure to select, the Mayor with the

advice and consent of the governing body, shall select a qualified person to serve as temporary municipal judge. Upon taking the oath of office, the temporary judge shall exercise all powers and perform all the duties of the Municipal Judge until the return of the Municipal Judge.  
(Ord. 162, passed 4-20-1994)

**§ 31.08 COMPENSATION FOR THE TEMPORARY MUNICIPAL JUDGE.**

(A) During the temporary incapacity or absence of the Municipal Judge the temporary municipal judge shall be paid at the rate of \$20 per court session, not to exceed 15 court sessions per year and will not be covered under any benefits of the Village of Milan.

(B) The compensation as is paid the temporary municipal judge shall not be deducted from the authorized salary of the Municipal Judge.  
(Ord. 162, passed 4-20-1994)

**§ 31.09 GENERAL DUTIES.**

The duties of the Municipal Judge shall be to;

(A) Ensure the establishment of appropriate judicial and administrative procedures for the efficient operation of the Municipal Court; and

(B) Adhere to the provisions of state law and the rules of procedure for municipal courts.  
(Ord. 162, passed 4-20-1994)

**§ 31.10 PERSONNEL AND FINANCES.**

All personnel of the Municipal Court shall be employed by the Village of Milan and the appropriations of the Municipal Court shall be controlled and budgeted in the same manner as any other department of the Village of Milan.  
(Ord. 162, passed 4-20-1994)

**§ 31.11 REPORTS.**

The Municipal Judge shall furnish written reports to the Village Board of all moneys collected by the court, not later than the tenth day of each month. All reports shall include an itemized statement showing the docket number, the different amounts collected, and an overall total.

(Ord. 162, passed 4-20-1994)

**§ 31.12 BOND.**

The Municipal Judge shall obtain and execute a bond to the village in the amount of \$5,000, which shall be executed by the person proposing to qualify as Municipal Judge and a surety company authorized to do business in the State of New Mexico. The premium for the bond shall be paid by the Village of Milan.

(Ord. 162, passed 4-20-1994)

**§ 31.13 TRAINING REQUIREMENTS.**

The Municipal Judge shall annually, as a condition of discharging the duties of the office and receiving the judge's salary, successfully complete a judicial training program conducted under the authority or with the approval of the Court Administrator, unless exempted from this requirement by the Chief Justice of the Supreme Court.

(Ord. 162, passed 4-20-1994)

***JURISDICTION*****§ 31.25 JURISDICTION.**

The Municipal Court shall have jurisdiction over all offenses and complaints under the ordinance of the municipality and may issue subpoenas and warrants and punish for contempt, and the Municipal Court shall have jurisdiction over other matters as may be authorized pursuant to state law.

(Ord. 162, passed 4-20-1994)

***COMPLIANCE WITH NEW MEXICO STATE  
STATUTE AND RULES OF PROCEDURE  
PROMULGATED BY THE SUPREME  
COURT OF NEW MEXICO*****§ 31.40 COMPLIANCE WITH STATE LAW.**

Provisions dealing with the initiation of proceedings, sentencing, rules of procedure, appeals and any other matter of the Municipal Court shall be governed by New Mexico State Statute and the Rules for Municipal Courts adopted by the Supreme Court of the State of New Mexico. As the above statutes and rules are amended from time to time, they shall serve to amend this chapter without the necessity of further change or amendment of this chapter.

(Ord. 162, passed 4-20-1994)



**CHAPTER 32: FIRE DEPARTMENT**

Section

*Fire Chief*

- 32.01 Village Fire Chief; appointment; qualification; compensation
- 32.02 Powers and duties of Fire Chief
- 32.03 Employment status

*Fire Department*

- 32.15 Fire Department

*Inspection of Premises to Safeguard Against Fire*

- 32.30 Premises in violation
- 32.99 Penalty

**FIRE CHIEF**

**§ 32.01 VILLAGE FIRE CHIEF; APPOINTMENT; QUALIFICATION; COMPENSATION.**

(A) The Fire Department shall be under the supervision and control of the Village Fire Chief, to be selected as hereinafter provided, who shall have the powers and who shall execute the duties as set forth, or as may be conferred upon him or her from time to time by the Village Manager and the Board of Trustees of the Village of Milan.

(B) The Fire Chief shall be appointed by the Board of Trustees of the Village of Milan by a majority vote thereof.

(C) The Board of Trustees shall enter into an employment contract with the Village Fire Chief which shall establish, among other matters, compensation and benefits, and shall be consistent with the provisions of this chapter.

(D) The Village Fire Chief shall be appointed solely on the basis of executive and administrative qualifications. The Village Fire Chief need not be a resident of the village or state at the time of appointment. After appointment, the Village Fire Chief may reside outside of the village while in office but must be within a 15-minute response time to the corporate boundary line of the Village of Milan.

(E) The Village Fire Chief shall not be appointed for any definite term and shall serve at the pleasure of the Board of Trustees as provided by law. (Ord. 207, passed 4-21-2005)

**§ 32.02 POWERS AND DUTIES OF FIRE CHIEF.**

(A) The Village Fire Chief shall be in charge of the day-to-day administrative affairs of the Village Fire Department, and responsible and accountable to the Village Manager and the Board of Trustees, as appropriate, for the administration of all Village Fire Department affairs placed in the charge by the Board of Trustees.

(B) The Village Fire Chief shall:

(1) Supervise, discipline and make recommendations to discharge to the Village Manager all persons engaged in the employment and administrative services of the Village Fire Department including volunteer fire personnel;

(2) Attend all meetings of the Board of Trustees. The Village Fire Chief shall have the right to take part in discussion but shall not be entitled to vote;

(3) Cause all ordinances, and lawful actions of the Mayor and Board of Trustees, which are subject to enforcement by the Village Fire Chief or by officers, volunteers and employees subject to the Village Fire Chief's direction and supervision, to be faithfully executed;

(4) Prepare and submit the annual budget and capital program to the Village Manager and Board of Trustees as provided by law;

(5) Under the direction of the Village Manager, manage and control all property, real and equipment belonging to the Village of Milan;

(6) Make any other reports as the Village Manager or the Board of Trustees may require concerning the operations of the Village Fire Department;

(7) Keep the Village Manager, Mayor and Board of Trustees fully advised, and make recommendations, as to the condition and future needs of the Village Fire Department and the condition and future need of the Village of Milan; and

(8) Perform any other duties as are specified in this chapter or may be required by the Board of Trustees.

(Ord. 207, passed 4-21-2005)

### § 32.03 EMPLOYMENT STATUS.

The Village Fire Chief shall not be subject to the Personnel Chapter, Chapter 34 of the Village of Milan. The Village Fire Chief shall have duties as set forth by state statute, ordinance, contract between the village and the Village Fire Chief, and other duties as the Board of Trustees from time to time shall designate.

(Ord. 207, passed 4-21-2005)

### *FIRE DEPARTMENT*

#### § 32.15 FIRE DEPARTMENT.

(A) Members and volunteers of the Village Fire Department need not be residents of the Village of Milan. Village Fire Department members and volunteers may reside outside of the village but must be within a 15-minute response time to the corporate boundary line of the Village of Milan.

(B) Members of the Fire Department shall serve on a volunteer basis, and without pay, except in the manner and to the extent provided for herein, or by the Board of Trustees from time to time by resolution or ordinance; and shall be governed by rules and regulations adopted by them by majority vote so long as the rules and regulations are not inconsistent herewith, or with New Mexico State Laws.

(C) All expenditures of monies for fire protection equipment and buildings shall be made only upon the approval by the recommendation of the Village Manager to the Board of Trustees of the Village of Milan, after giving due consideration to the recommendation and requests of the Fire Chief.

(D) The members of the Fire Department shall be trained by a program to be instituted by the Fire Chief, and in any other manner as may be hereinafter be directed by the Board of Trustees of the Village of Milan.

(E) Each firefighter attending or fighting fires, or while on active duty, may receive as compensation for his or her services the amount as may be determined and allowed by the Board of Trustees of the Village of Milan.

(Ord. 207, passed 4-21-2005)

***Statutory reference:***

*Rules and regulations relating to the*

*Fire Protection Fund Act, see*

*NMSA §§ 59A-53-1 through 59A-53-17*

**§ 32.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.

***INSPECTION OF PREMISES TO  
SAFEGUARD AGAINST FIRE***

**§ 32.30 PREMISES IN VIOLATION.**

Whenever any officer or member shall find in any building, or upon any premises or other place, combustible or explosive matter or dangerous accumulation of rubbish or unnecessary accumulation of waste paper, boxes, shavings or any other highly inflammable materials especially liable to fire, and which is so situated as to endanger property, or shall find obstructions to or on fire escapes, stairs, passageways, doors or windows liable to interfere with the operations of the Fire Department, or egress of occupants, in case of fire or shall find any other condition dangerous to life or property by reason of the fire hazard, he or she shall order the same to be removed or remedied, and the order shall forthwith be complied with by the owner or occupant of the premises or buildings, subject to appeal within 24 hours to the Mayor, who shall within 10 days review the order and file his or her decision thereon, and unless the order is revoked or modified it shall remain in full force and be obeyed by the owner or occupant. Any owner or occupant failing to comply with the order within 10 days after the appeal shall have been determined, or if no appeal is taken, then within 10 days after the service of the order, shall be liable to a penalty as hereinafter stated.

(Ord. 7A, passed 5-7-1957)





**CHAPTER 33: TAXATION**

Section

***Municipal Gross Receipts Tax***

- 33.01 Imposition of tax
- 33.02 General provisions
- 33.03 Specific exemptions
- 33.04 Dedication
- 33.05 Effective date

***Municipal Environmental Services  
Gross Receipts Tax***

- 33.20 Imposition of tax
- 33.21 General provisions
- 33.22 Specific exemptions
- 33.23 Dedication

***Municipal Infrastructure Gross Receipts Tax***

- 33.35 Imposition of tax
- 33.36 General provisions
- 33.37 Specific exemptions
- 33.38 Dedication
- 33.39 Effective date

***Cross-reference:***

*Business taxes, licenses, fees and permits, see  
Ch. 110*

***MUNICIPAL GROSS RECEIPTS TAX***

**§ 33.01 IMPOSITION OF TAX.**

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax

equal to 1/4 of 1% of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this subchapter is pursuant to the Municipal Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the municipal gross receipts tax.

(Ord. 89, passed 4-30-1979; Am. Ord. 90, passed 7-1-1979; Am. Ord. 108, passed 7-1-1982; Am. Ord. 121, passed 3-4-1985; Am. Ord. 145, passed 5-16-1990)

**§ 33.02 GENERAL PROVISIONS.**

This subchapter hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

(Ord. 121, passed 3-4-1985; Am. Ord. 145, passed 5-16-1990)

**§ 33.03 SPECIFIC EXEMPTIONS.**

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

(A) The transmission of messages by wire or other means from 1 point within the municipality to another point outside the municipality;

(B) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from 1 point within the municipality to another point outside the municipality; or

(C) A business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Subsection C of NMSA § 7-1-6.4, 1978. (Ord. 89, passed 4-30-1979; Am. Ord. 90, passed 7-1-1979; Am. Ord. 108, passed 7-1-1982; Am. Ord. 121, passed 3-4-1985; Am. Ord. 145, passed 5-16-1990)

#### § 33.04 DEDICATION.

Revenue from the municipal gross receipts tax will be used for the purpose(s) listed: general fund. (Ord. 89, passed 4-30-1979; Am. Ord. 90, passed 7-1-1979; Am. Ord. 108, passed 7-1-1982; Am. Ord. 121, passed 3-4-1985; Am. Ord. 145, passed 5-16-1990)

#### § 33.05 EFFECTIVE DATE.

The effective date of the municipal gross-receipts tax shall be 1-1-1991 unless an election is held pursuant to NMSA § 7-19D-9, 1978 on the question of disapproving the chapter, in which case the effective date shall be either July 1 or January 1, whichever date occurs first after the expiration of 3 months from the date when the results of the election are certified to be in favor of the subchapter's adoption. (Ord. 89, passed 4-30-1979; Am. Ord. 90, passed 7-1-1979; Am. Ord. 108, passed 7-1-1982; Am. Ord. 111, passed 9-7-1982; Am. Ord. 121, passed 3-4-1985; Am. Ord. 145, passed 5-16-1990)

### ***MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX***

#### § 33.20 IMPOSITION OF TAX.

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to 1/16 of 1% of the gross receipts reported or required to be reported by the person pursuant to the

New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this subchapter is pursuant to the Municipal Environmental Services Gross Receipt Tax Act as it now exists or as it may be amended and shall be known as the municipal environmental services gross receipts tax. (Ord. 149, passed 3-31-1992)

#### § 33.21 GENERAL PROVISIONS.

This subchapter hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. (Ord. 149, passed 3-31-1992)

#### § 33.22 SPECIFIC EXEMPTIONS.

No municipal environmental services gross receipts tax shall be imposed on the gross receipts arising from:

(A) The transmission of messages by wire or other means from 1 point within the municipality to another point outside the municipality;

(B) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from 1 point within the municipality to another point outside the municipality; or

(C) A business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Subsection C of NMSA § 7-1-6.4, 1978. (Ord. 149, passed 3-31-1992)

**§ 33.23 DEDICATION.**

Revenue from the municipal environmental services gross receipts tax will be used for the purpose(s) listed: for the acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

(Ord. 149, passed 3-31-1992)

***MUNICIPAL INFRASTRUCTURE  
GROSS RECEIPTS TAX***

**§ 33.35 IMPOSITION OF TAX.**

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to 1/8 of 1% of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this chapter is pursuant to the Municipal Infrastructure Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the municipal infrastructure gross receipts tax.

(Ord. 152, passed 3-24-1993)

**§ 33.36 GENERAL PROVISIONS.**

This subchapter hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

(Ord. 152, passed 3-24-1993)

**§ 33.37 SPECIFIC EXEMPTIONS.**

No municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:

(A) The transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

(B) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

(C) A business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Subsection C of NMSA § 7-1-6.4, 1978.

(Ord. 152, passed 3-24-1993)

**§ 33.38 DEDICATION.**

Revenue from the municipal infrastructure gross receipts tax will be used for the purpose(s) listed below:

(A) General infrastructure improvement; and/or

(B) The general fund.

(Ord. 152, passed 3-24-1993)

**§ 33.39 EFFECTIVE DATE.**

The effective date of the municipal infrastructure gross receipts tax shall be either January 1 or 7-1-1993, whichever date occurs first after the expiration of at least 3 months from the date this subchapter is adopted.

(Ord. 152, passed 3-24-1993)



## CHAPTER 34: PERSONNEL

### Section

	<b><i>General Provisions</i></b>	34.066	Exclusive representation
34.001	Purpose	34.067	Decertification of exclusive representative
34.002	Scope	34.068	Scope of bargaining
34.003	Amendment of policy	34.069	Negotiations and impasse resolution
34.004	Equal Employment Opportunity policy	34.070	Employers; prohibited practices
34.005	Management rights	34.071	Employees and labor organizations; prohibited practices
34.006	Definitions	34.072	Strikes and lockouts prohibited
	<b><i>Employment</i></b>	34.073	Agreements valid; enforcement
34.020	Employment status	34.074	Judicial enforcement; standard of review
34.021	Recruitment and selection		<b><i>Sexual Harassment, Sex Discrimination and Retaliation Prevention Policy and Procedures</i></b>
34.022	Changes in employment status	34.085	Introduction
34.023	Conditions of employment	34.086	Purpose
34.024	Employee discipline	34.087	Definitions
34.025	Grievance procedures	34.088	Policy
	<b><i>Benefits</i></b>	34.089	Responsibility
34.040	Compensation and benefit program	34.090	Recognizing sexual harassment at work
34.041	Leave and holidays	34.091	Responding to sexual harassment
34.042	Miscellaneous	34.092	Filing, responding to and investigating Equal Employment Opportunity
	<b><i>Collective Bargaining</i></b>	34.093	Corrective and disciplinary measures
34.055	Short title		<b><i>Substance Abuse and Testing of Village Employees</i></b>
34.056	Purpose	34.105	Short title
34.057	Conflicts	34.106	Purpose of the provisions
34.058	Definitions	34.107	Definitions
34.059	Rights of employees	34.108	Extent of provisions
34.060	Management rights	34.109	Testing authority
34.061	Labor Management Relations Board; created; terms	34.110	Conditions/procedures for testing
34.062	Board; powers and duties	34.111	Confidentiality
34.063	Hearing procedures		
34.064	Appropriate bargaining units		
34.065	Elections		

**GENERAL PROVISIONS**

**§ 34.001 PURPOSE.**

The purpose of this merit system subchapter is to establish consistent, basic policies and practices concerning relations between the Village of Milan and its employees. This merit system subchapter establishes the formal grievance procedure available to classified employees to hear grievances with respect to demotions, dismissals and suspensions, and provides the method by which formal grievances are decided. The general provisions of this merit system subchapter apply to all village employees, except that the provisions governing merit, discipline for cause and the grievance of disciplinary actions do not apply to unclassified employees.  
(Ord. 210, passed 2-23-2006)

**§ 34.002 SCOPE.**

Definite rules and regulations cannot be readily formulated for every possible problem and situation. This subchapter serves as a general basis and guide for the proper, efficient, and effective administration of personnel matters for the Village of Milan. This subchapter repeals and supersedes the merit system ordinance dated 6-19-2003, Ordinance 196, and all personnel rules and regulations applicable to employees of the Village of Milan.  
(Ord. 210, passed 2-23-2006)

**§ 35.003 AMENDMENT OF POLICY.**

(A) There shall be no resolution or other action of the Village Board of Trustees or other village officials which is inconsistent with this subchapter, except by amendment of this subchapter as required by law.

(B) The Village Board of Trustees reserves the right to amend this merit system subchapter at its discretion.  
(Ord. 210, passed 2-23-2006)

**§ 34.004 EQUAL EMPLOYMENT OPPORTUNITY POLICY.**

The village provides equal employment opportunity to all qualified employees. No employee of the village or prospective employee shall be discriminated against on the basis of race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental disability or serious medical condition, or veteran status in consideration for employment, duration of employment, training, transfer, salary, benefits, and other terms and conditions of employment. It is the objective of the village to comply with the requirements of equal employment opportunity as set forth in federal and state laws and to comply with applicable presidential executive orders.  
(Ord. 210, passed 2-23-2006)

**§ 34.005 MANAGEMENT RIGHTS.**

The Village of Milan reserves the right to direct the work of its employees to produce cost effective and efficient results for the citizens of Village of Milan and to take appropriate disciplinary action when necessary.  
(Ord. 210, passed 2-23-2006)

**§ 34.006 DEFINITIONS.**

(A) *Pronouns.* All pronouns used in this merit system subchapter include the masculine and feminine and include the singular and plural. The context of this merit system subchapter must be read accordingly.

(B) *Definitions.* For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay granted at the Village Manager's discretion for good cause.

**ANNIVERSARY DATE.** A day 12 months from an employee's date of hire.

**ANNUAL LEAVE.** Leave with pay granted to unclassified, classified or appointed employee after accrual at a specific rate.

**APPEAL.** A written request that a formal grievance decision by management be reconsidered at a further stage in the grievance procedure.

**APPLICANT.** A person who has made formal application on an official village personnel application form for a position in the village service.

**APPOINTED EMPLOYEE.** An appointed employee is an unclassified, terminable-at-will employee.

**CASUAL EMPLOYEE.** An employee called to fill a classified or unclassified position on short notice or on an occasional basis for a short period of time, the casual employee must meet requirements for the position they are filling, or an employee who works less than 20 hours per week.

**CLASSIFIED EMPLOYEE.** A full- or part-time employee who is hired to fill a classified position and has completed the probationary period. **CLASSIFIED EMPLOYEES** can only be disciplined for cause and are entitled to all the rights and benefits of the Village of Milan merit system subchapter.

**CLASSIFIED POSITION.** A classified position is one whose employees can only be disciplined for cause.

**COMPENSATORY TIME.** Those hours granted in lieu of overtime pay to a Fair Labor Standards Act (FLSA) nonexempt employee as defined by the FLSA, on the basis of 1-1/2 hours compensatory time for each hour of overtime actually worked by the employee.

**DEMOTION.** A personnel action which reduces the employee's responsibilities and pay. **DEMOTIONS** may be voluntary or may be the result of a disciplinary action.

**DEPARTMENT HEAD.** Consist of the following:

- (a) Village Manager;
- (b) Joint Utilities Director;
- (c) Recreation Director;
- (d) Building and Parks Director;
- (e) Vehicle Maintenance Director;
- (f) Municipal Judge;
- (g) Police Chief; and
- (h) Fire Chief.

**DISMISSAL.** An action by the village which involuntarily terminates an individual's employment with the village.

**DUE PROCESS.** The right granted to a full-time or part-time classified employee who has completed the probationary period to a pre-disciplinary and a post-disciplinary hearing, for actions of suspension, demotion or dismissal.

**ELECTED OFFICIAL.** An individual elected by popular vote or appointed to fill vacancies in an elective office (i.e. Village Board of Trustees).

**EXEMPT EMPLOYEE.** All executive, administrative, and professional employees as defined in Department of Labor regulations to the FLSA, and whose compensation is based on a fixed annual salary. Classification as exempt is determined by a position's requirements and responsibilities as described in the Department of Labor Regulations. **EXEMPT EMPLOYEES** do not receive additional pay or compensatory time for working more than 40 hours per week.

**FULL-TIME EMPLOYEE.** A full-time employee is one who works a minimum of 80 hours per pay period, except firefighters and police officers, who work a varied work week.

management which result in loss of pay to the employee (formal grievance) or which results from dissatisfaction with the working conditions or relationships (informal grievance).

**INSUBORDINATION.** The conduct of an employee constituting defiance, disobedience, dissension, rebelliousness or resistance to supervision.

**LAYOFF (REDUCTION-IN-FORCE).** The involuntary separation of an employee from the village service without fault on the part of the employee due to reorganization, lack of work or lack of funds.

**NONEXEMPT MEDICAL EMPLOYEES.** All employees who are covered by the provisions of the FLSA and the regulations interpreting the Act, nonexempt employees receive compensatory time off or overtime pay for actual hours worked in excess of 40 hours per work week, except firefighters and police officers, who work 86 hours per work week.

**PART-TIME EMPLOYEE.** A employee works a minimum of 32 hours per week on a regular basis, but less than 40 hours, except for employees hired prior to 1-1-2006.

**PAY PERIOD.** Employees are paid every 2 weeks on Friday. The payroll period consists of 2 consecutive work weeks.

**PERSONNEL COMMITTEE.** A committee comprised of 4 village employees and 1 non-village employee, appointed by the Village Board of Trustees, make recommendations to the Village Manager on personnel ordinance changes.

**POLICE CHIEF.** The Village of Milan Police Chief or Chief of Police is a appointed official and who shall be a New Mexico certified law enforcement police officer and who has not been convicted of a felony or a crime of dishonesty whether it be a misdemeanor or felony conviction.

**POST-DISCIPLINARY HEARING.** A formal hearing held after disciplinary action has been taken and which is conducted by a hearing officer at the request of a classified employee who is grieving a suspension or demotion, or a former employee who is grieving a dismissal.

**PRE-DISCIPLINARY HEARING.** A hearing conducted by the Village Manager for the benefit of classified employees before the imposition of the disciplinary actions of suspension, demotion or dismissal.

**PROBATIONARY EMPLOYEE.** A full-time or part-time employee hired to fill a classified position who has not yet completed the 6 month probationary period or 1,040 hours, whichever is greater, of employment during which time the employee is terminable-at-will and cannot grieve his or her termination. All uniformed employees of the Police and Fire Departments serve a 1-year probationary period or 2,080 hours, whichever is greater.

**PROMOTION.** Transfer to a position requiring higher responsibilities and salary.

**SICK LEAVE.** Leave with pay granted to a classified or qualified appointed employee, after accrual at a specific rate, when personal illness keeps the employee from performing the duties of the position or when an employee's spouse, parent or child, who is related by marriage or blood meets the definition of a serious medical condition under the Family and Medical Leave Act.

**SICK LEAVE ABUSE.** Use of accrued sick leave for non-medical problems or for repeated absences on Mondays and Fridays or for calling in sick for the purpose of extending scheduled annual leave or holiday time. Employees abusing sick leave may be disciplined up to and including dismissal.

**SUSPENSION.** An enforced leave of absence without pay, not to exceed 10 working days for disciplinary reasons.



**TEMPORARY POSITION.** A seasonal position or a position established for a

A terminable-at-will employee serves at the discretion of the village, and his or her employment can be terminated with or without cause. A terminable-at-will employee cannot grieve suspension, demotion, dismissal or other disciplinary actions.

**TRANSFER.** The transfer of an employee from 1 department or office to another department or office in the village service. The Village Manager may transfer employees from 1 position to another in accordance with village needs.

**UNCLASSIFIED EMPLOYEES.** Those employees filling appointed, casual or temporary positions, and those who have not completed the probationary period.

**VILLAGE BUSINESS.** The performance of duties of a village position at an employee's normal workstation or at a location authorized by the village.

**VOLUNTEER FIREFIGHTERS.** Firefighters who are on call and work regularly but intermittently do not qualify for the Social Security and Medicare exception for emergency workers defined in IRC § 3121 (b)(7)(iii). This exception is only for temporary workers who respond to unforeseen emergencies, e.g. floods. When a worker who is termed a volunteer receives compensation, that compensation is wages subject to Social Security and Medicare tax if the worker is an employee (unless an exclusion applies). For instance, **VOLUNTEER FIREFIGHTERS** may not receive salaries, but they may receive amounts intended to reimburse them for expenses. They may also receive other cash or in-kind benefits that may be wages. **VOLUNTEER FIREFIGHTERS** can receive tax-exempt reimbursements for their expenses, but these reimbursements must now be under an accountable plan within the meaning of IRC § 62(c) and

regulations. An accountable plan is one that is designed to reimburse only actual, substantiated business expenses. This provision is effective for tax years after 1988. An accountable plan must: (1) require workers to substantiate actual business expenses; (2) allow no reimbursements for unsubstantiated expenses; and (3) require that any amounts received that exceed substantiated expenses must be returned within a reasonable period. Amounts that are termed reimbursements but that are not paid under an accountable plan are subject to income and Social Security and Medicare taxes. Therefore, a per diem or fixed amount paid to a firefighter (or other worker), that does not reimburse actual, documented expenses, is includible in income and subject to Social Security and Medicare.

**VOLUNTEERS.** Individuals who serve on boards, commissions and village departments, and are not village employees.  
(Ord. 210, passed 2-23-2006)

## EMPLOYMENT

### § 34.020 EMPLOYMENT STATUS.

#### (A) *Classified employees.*

(1) *Full-time classified employee.* A full-time classified employee is one who has completed the probationary period and who normally is scheduled to work 80 hours per pay period week. A full-time classified employee is eligible for all rights and benefits provided by the village.

(2) *Part-time classified employee.* A part-time employee is an employee who has completed the probationary period, who regularly works a minimum of 32 hours per week, but less than 40 hours. Part-time employees accrue vacation or sick leave at 4 hours per month and are not eligible for insurance benefits.

(B) *Unclassified employees.*

(1) *Appointed employees.* Appointed employees are the Village Manager, Police Chief, Fire Chief and Municipal Clerk. Appointed employees are unclassified, are terminable-at-will and cannot avail themselves of the grievance procedures set forth herein, but are entitled to all other benefits provided by the village in accordance with this merit system subchapter.

(2) *Probationary employee.* The purpose of the probationary period is to evaluate the employee's ability, potential and performance. A full-time or part-time probationary employee is an unclassified employee who is hired to fill a classified position, but who has not yet completed the probationary period of employment during which time he or she is terminable-at-will. Probationary employees may not avail themselves of the grievance procedures set forth herein, but are entitled to all village benefits provided herein.

(a) All employees serve a 6-month probationary period, except as noted in division (b) below.

(b) Uniformed employee's hired to fill police and fire positions serve a 1-year probationary period or 2,080 hours, whichever is greater, and must obtain the statutorily required certification for the position within 1 year from the date of hire. If the employee fails to obtain certification within 1 year or 2,080 hours, whichever is greater, the employee shall be terminated unless the employee is enrolled in the law enforcement or fire academy on the employee's anniversary date. Any employee who completes the law enforcement or fire academy training and fails to obtain certification shall be terminated.

(c) To determine whether an employee has satisfactorily completed the probationary period, the employee's department head shall evaluate the employee's performance and the employee's ability to work with the public, peers, supervisors and management, and make a determination of continued employment. A probationary employee may be evaluated at any time during the probationary period.

(d) If an employee does not satisfactorily complete the probationary period, the employee shall be dismissed. The department head proposes dismissal of a probationary employee which must be discussed and approved by the Village Manager.

(e) If an employee is hired to fill a full-time or part-time classified position, the first day of work in that position shall be used in computing the beginning of the probationary period.

(f) An employee who fills a temporary position and is subsequently hired to fill a classified position shall serve the required probationary period. The beginning date of the probationary period is the date the employee changes from temporary to probationary status.

(g) If a probationary employee changes positions during the probationary period, he or she must serve the remainder of the current probationary period or serve a 3-month probationary period whichever is greater.

(3) *Temporary employee.* A temporary employee is hired on either a full-time or part-time basis to a seasonal position or to a position established for a period of no more than 6 months. Temporary employees are terminable-at-will, are not entitled to grieve personnel actions, do not receive village benefits and do not accrue leave.

(4) *Casual employee.* A casual employee is hired on an as needed basis. Casual employees are terminable-at-will, are not entitled to grieve personnel actions, do not receive village benefits and do not accrue leave.

(Ord. 210, passed 2-23-2006)

### § 34.021 RECRUITMENT AND SELECTION.

(A) *Recruitment posting procedure.* The department head shall prepare the request for the position. The vacancy shall be posted within the village for 7 calendar days only. The Village Manager or his or her designee is responsible for posting and advertising. Classified or non-classified

employees can apply for a job vacancy in any other village office or department for which the employee is qualified during this time frame.

(B) *Apply for transfers.* All village employees, who are not the subject of disciplinary action, may apply for a job vacancy in any other village office or department for which the employee is deemed qualified. The department head will recommend to the Village Manager the top candidate to be transferred.

(C) *Posting.* After the 7 calendar day period if no classified or nonclassified employee has applied then the position shall be advertised in the local newspaper and other means necessary to receive qualified applicants.

(D) *Exceptions to posting.* Posting is waived, with the approval of the Village Manager, when an employee is qualified to perform the duties of a position on a temporary basis.

(E) *Applicant responsibility.*

(1) *Submission of applications.* Applications for employment shall be accepted for vacant positions at village hall during normal business hours. Applicants shall be considered for positions for which they have applied and are qualified. Applications must be submitted on the employment application form provided by the village.

(2) *Proof of qualification.* The applicant is responsible for furnishing proof of qualifications or possession of any license, certificate or degree when these requirements are necessary and set forth in the job description.

(3) *Immigration Act compliance.* The applicant is responsible for furnishing proof of identification and right to work in accordance with the Immigration Reform and Control Act of 1986.

(4) *Certification.* The applicant is responsible for signing the employment application and certifying the truth of all statements made in the application.

(5) *Review applications/interviews.* The Village Manager or his or her designee shall submit applications to the department head for review and determination of applicants to be interviewed. The department head will submit all applicant names to the Village Board of Trustees for their interview recommendations.

(F) *Selection.* The department head shall recommend the top 3 candidates to the Village Board of Trustees. The selection shall be based on the following: skills; educational background; experience; personal interview; references; and results of preemployment examinations, when required. Recommendations must be in writing and must have supporting documentation.

(1) *Employment background and reference checks.* A background investigation and references provided by the applicant may be checked. Applicants shall be asked by the village to sign a written authorization for the village to check references and personal information as necessary for a background investigation. Only those applicants who sign this written authorization shall be considered for the position for which they have applied.

(2) *Physical examinations and drug testing.* Applicants to whom job offers have been made shall be required to undergo medical examinations which may include urinalysis, blood testing, radiographic examinations, and drug and alcohol testing. Law enforcement officer applicants, to whom jobs are offered, are also required to undergo psychological testing. Pre-employment medical examinations must be completed and reviewed before actual employment begins. Offers of employment are contingent upon the physician's statement that the individual can perform the assigned duties and tasks of that position and is drug free. Positive drug or alcohol tests shall result in the withdrawal of the offer of employment. Pre-employment medical examinations shall be paid for by the village.

**(G) Ineligibility for hire and rehire.**

(1) An applicant is considered ineligible for hire or rehire by the Village of Milan if the applicant has:

(a) Failed to complete pre-employment examinations or other requirements as directed by the village;

(b) Not met the criteria for insurance or bonding as required by the village or state law;

(c) Not been certified by a physician that the applicant can perform the essential functions of the position; and/or

(d) Been convicted of a felony or a misdemeanor as described in NMSA §§ 28-2-3 *et seq.*, 1978.

(2) The above list is not necessarily exhaustive, and does not include all the reasons which would make an applicant ineligible for hire or rehire.

**(H) Ineligibility of applicants for police officer.** No person who has been convicted of a felony, a misdemeanor involving moral turpitude, who has been convicted on a domestic violence charge or a DWI, or who is under indictment is eligible to serve as a police officer.

(Ord. 210, passed 2-23-2006)

### **§ 34.022 CHANGES IN EMPLOYMENT STATUS.**

**(A) Promotion.** Village employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify.

**(B) Demotion.** An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated because the employee's position is being abolished due to a lack of funds or lack of work and there are no appropriate vacancies at the same level; or when the

employee does not possess the necessary ability or licensure to render satisfactory performance in the position presently held; or when the employee voluntarily requests a demotion. Demoted employees shall receive a reduction in pay. Only a classified employee involuntarily demoted due to an inability to render satisfactory performance in their present position can grieve the demotion.

**(C) Transfer.** Employees may be moved from 1 position to another either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the village as determined by the Village Manager.

**(D) Resignation.** An employee voluntarily resigning shall submit, in writing, a 2-week notice of resignation. Failure to provide written 2-week notice of resignation may be grounds for refusal of future employment with the village. Unauthorized absence from work for 3 regularly-scheduled working days shall be considered a voluntary resignation.

**(E) Re-employment.** Village employees who resign after at least 3 years of satisfactory performance and who are rehired within 3 months of resignation, the employees' anniversary date shall be the original date the employee started employment for the purpose of computing sick and annual leave.

**(F) Reduction-in-force.** If it is necessary for the village to reduce the number of village employees because of reorganization, lack of funds or lack of work, the department head shall recommend necessary layoffs, to the Village Manager who will submit the recommendations for approval by the Village Board of Trustees. The reduction shall occur in the following manner.

(1) Temporary and probationary employees shall be laid off before full- or part-time classified employees unless they are filling positions which require specific skills and knowledge as determined by the Village Manager.

(2) Lay-off of recommendations of classified employees shall be made by the department head based on the employee's suitability for the jobs remaining, ability to perform available work and past

job performance. If all other criteria are equal, length of service with the village shall be considered as determined by the Village Manager.

(3) Employees scheduled for lay-off shall be given as much notice as possible. Employees to be laid off may be notified at any time during a pay period and may be allowed to work through the end of that regular pay period or receive pay to the end of that period.

(4) Accrued annual leave shall be paid through the final day of employment.

(5) All employees laid off in good standing shall be eligible for rehire.

(6) A laid-off employee returning to village employment within 6 months of the date of lay-off shall not serve a probationary period, if hired to the former position.

(7) A laid-off employee, if rehired, within 6 months of the lay-off shall retain the original date of hire for the purposes of computing sick and annual leave.

(G) *Dismissal.* The department head has the authority to recommend the dismissal of classified employees for just cause, which includes, but is not limited to, unsatisfactory performance, illegal activity, unacceptable conduct, insubordination or any other reason referenced in § 34.024 of this chapter. All dismissals must be approved by the Village Manager and discussed with the Village Attorney before any action is taken.

(H) *Return of village property.* At the time that an employee is voluntarily or involuntarily terminated, the employee must return all village property to the appropriate department head, including, but not limited to: keys, vehicles, supplies, equipment, and uniforms that may be in the employee's possession. Failure to return all village property shall result in a deduction from the employee's final paycheck. The department head must notify the payroll office in writing that the employee returned all equipment before a final check shall be issued.  
(Ord. 210, passed 2-23-2006)

## § 34.023 CONDITIONS OF EMPLOYMENT.

### (A) *Performance evaluation.*

(1) *Probationary period evaluations.* The department head or supervisor shall discuss performance with the employee during the probationary period. At the end of the probationary period the department head shall determine if the employee can become a classified employee entitled to all of the rights and benefits of that status. Also see § 34.020(B).

(2) *Other evaluations.* Other evaluations may be done at the discretion of the department head or supervisor under the following conditions:

- (a) Unsatisfactory performance;
- (b) Promotion or reassignment; or
- (c) Demotion or suspension.

(3) *Contents of evaluation.* A performance evaluation will contain an overall appraisal of the employee's performance. The performance evaluation shall state areas of responsibilities and standards of performance, and include a plan of improvement when necessary. Written performance appraisals with plans of improvement shall become part of an employee's personnel file for not more than a period of 6 months or when the approval plan has been satisfactorily completed.

(4) *Employee rebuttal.* The employee may submit a rebuttal statement to the performance appraisal which shall be attached to and become a part of the performance appraisal. The rebuttal shall be submitted within 10 days of the evaluation and shall become part of the employee's personnel file.

(B) *Prohibited political activities.* All elected officials and employees are prohibited from:

(1) Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;

(2) Directly or indirectly coercing, attempting to coerce, commanding or advising a village officer or employee to pay, lend, or contribute anything of value to a party, committee, or organization, agency, or person for a political purpose;

(3) Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute part of their pay to a political fund, influencing subordinate employees to buy tickets to political fund raising events and similar events, advising employees to take part in political activity and matters of a similar nature; or

(4) Engaging in political activity while on duty or on village property during normal working hours.

(C) *Nepotism.*

(1) *Definition of nepotism.* No person related within the third degree of consanguinity or affinity to an individual who is elected or appointed to a public office or position in the village under the laws of the State of New Mexico or by virtue of any ordinance of the village, and whose compensation is to be paid out of public funds, shall be employed by the village unless the person's employment is first approved by the Village Board of Trustees.

(2) *Compensation.* Provided further, that this division shall not apply where the compensation payable to the person is less than \$600 per year. Any person employed in violation of this division shall not be paid or receive any compensation from public funds, and employment shall be null and void. The person or persons giving the employment, together with his, her or their bondsman, shall be liable for any monies unlawfully paid out.

(D) *Conflicts; ban.* No employee shall engage in any business or transaction or accept private employment or other public employment which is incompatible with the proper discharge of the employee's responsibilities for the village or which gives the appearance of impropriety.  
(Ord. 210, passed 2-23-2006)

#### § 34.024 EMPLOYEE DISCIPLINE.

(A) *Basis for employee discipline.*

(1) *Just cause discipline.* Disciplinary actions for employees, are based on just cause in order to promote the efficiency of the services rendered by the village and the operation of its respective departments and offices. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, age, religion, color, national origin, sex, sexual orientation, physical, mental disability, serious medical condition or any non-merit factor. No employee shall be disciplined for refusing to perform an unlawful act.

(2) *Definition of just cause. JUST CAUSE* is defined as any conduct, action or inaction arising from, or directly connected with the employee's work which is inconsistent with the employee's obligation to the village and reflects the employee's disregard of the village's interest, *JUST CAUSE* includes, but is not limited to, inefficiency, incompetence, theft, misconduct, negligence, insubordination, violation of village policy or procedure, unauthorized use of village funds, property, facilities, materials, disruptive behavior, repeated tardiness, excessive absences, unsatisfactory work performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems, or for conviction of a felony or misdemeanor involving moral turpitude as described in the Criminal Offender Employment Act, NMSA §§ 28-2-1 *et seq.*, 1978.

(3) *Disciplinary action.* Any department head may take disciplinary action against an employee pursuant to the department head's authority and consistent with departmental policies and this merit system ordinance. Copies of any documented

disciplinary action shall be furnished to the Village Manager's office for placement in the employee's file with the signature of the recipient acknowledging receipt of the action.

(4) *Approval of the Village Manager and consultation with the Village Attorney.* Dismissal, involuntary demotion and suspension require approval of the Village Manager and consultation with the Village Attorney before implementation. Whenever the consultation is not practical because of urgent circumstances, the employee should be put on administrative leave with pay and the situation reviewed with the Village Manager as soon as practical.

(B) *Progressive discipline.* A classified employee shall be progressively disciplined for unsatisfactory work performance whenever practical. Each case of inadequate performance or act of misconduct shall be judged individually. The step of corrective action used depends on the severity of the infraction and the employee's previous work record. Under certain circumstances, as described below, suspension without pay or dismissal may be the appropriate initial disciplinary action.

(1) *Verbal counseling.* Verbal counseling is used for minor infractions such as informing the employee that his or her actions, behavior or conduct needs to change. Supervisors shall keep written notations of verbal reprimands. Verbal counseling is not grievable. Causes for verbal counseling include, but are not limited to:

(a) Substandard work performance including failure to complete assignments or failure to complete them timely;

(b) Inaccurate or unprofessional appearing work product;

(c) Interrupting other employees and keeping them from completing their work;

(d) Excessive use of the telephone for personal business;

(e) Loud and disruptive conduct;

(f) Conducting personal business while on duty; and

(g) Tardiness or absences.

(2) *Written reprimand.*

(a) An employee may receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used or if a verbal reprimand was not effective in correcting the employees conduct. Causes for written reprimands include, but are not limited to:

1. The causes listed above for verbal reprimands;

2. Repeated absences or tardiness;

3. Failure to follow instructions;

4. Failure to follow village rules and procedures;

5. Using the village's postage meter, copy machine, computer or other equipment for personal use or gain or personal gain others; and

6. Writing personal letters on village letterhead and sending personal mail in village envelopes.

(b) 1. Written reprimands shall be placed in the employee's personnel file by the employee's supervisor after providing the employee with a copy of the statement. The employee shall be asked to acknowledge having read the comments by signing the statement. The employee's signature indicates the employee read the statement, but does not necessarily indicate concurrence with its content. If the employee refuses to sign, a witness must attest that the statement was presented to the employee.

2. The employee may respond with a written rebuttal, which shall be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not subject to the formal grievance procedure.

(3) *Suspension.* An employee may be suspended by a department head without pay for a single serious offense, continued inadequate job performance, misconduct after previous attempt(s) to correct the conduct have failed or for misconduct. The employee's supervisor must discuss the decision to suspend an employee with the department head. The suspension shall not exceed 5 working days. Suspension is not a necessary step in progressive discipline, and it may be eliminated if circumstances warrant. This suspension of an employee is not subject to the formal grievance procedure. Causes for suspensions include, but are not limited to the causes listed for verbal counseling and written reprimands.

(4) *Demotion.* An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated because the employee is unable to satisfactorily perform in the position presently held. Demoted employees shall receive a reduction in pay. A classified employee demoted due to an inability to render satisfactory performance in the position presently held is entitled to a grievance proceeding. Demotion is not a necessary step in progressive discipline.

(5) *Disciplinary action.* All documented employee disciplinary actions will develop a plan of improvement which will provide specific areas of improvement and a time limit to comply not to exceed 60 days.

(6) *Dismissal.* Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance or when the employee has engaged in behavior that is of a very serious nature and which is unacceptable for a village employee even though the employee has not been previously disciplined. After consultation with the Village Attorney, the employee's department head must recommend the decision to dismiss to the Village Manager. Causes for dismissal without progressive discipline include, but are not limited to:

(a) Theft;

(b) Conviction of a job-related felony and misdemeanor as described in the Criminal Offender Employment Act, NMSA §§ 28-2-1 *et seq.*, 1978;

(c) Acts of negligence causing damage to persons or village property;

(d) Falsification of information on the employee's job application or other village records;

(e) Manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on the job or reporting to work under the influence of an unlawful controlled substance or alcohol;

(f) Failure to meet the standards of the village's drug policy;

(g) Intentional abuse or destruction of village equipment and/or property;

(h) Refusal to carry out reasonable orders, or insubordination;

(i) Discriminating against or harassment of employees or citizens based on race, color, religion, national origin, sex, marital status, sexual orientation, age, mental or physical disability or serious medical condition;

(j) Bringing unapproved weapons on to village property;

(k) Refusal or failure to comply with village policy or state and federal regulations;

(l) Disruptive conduct interfering with the village's operation;

(m) Unauthorized use of village property, facilities, equipment, including computers, materials, or other village assets for personal use;

(n) Accepting gratuities;



(o) Sleeping on the job; and/or

(p) Any other conduct deemed not to be in the best interest of the village and its employees, such as fighting or causing harm to others.

(7) *Authority to take disciplinary action.*

(a) Supervisors and department heads may take disciplinary action and may maintain written documentation in support of the action, and may recommend suspensions over 5 days, demotions and discharges. However, only the Village Manager may proceed with disciplinary action which includes suspensions over 5 days, demotions and discharges.

(b) 1. The above examples are typical of the types of infractions sometimes encountered, but are not inclusive of all situations which may arise warranting dismissal without progressive discipline.

2. The village reserves the right to exercise judgment and render disciplinary action or dismissal as determined appropriate based on the circumstances of each case.  
(Ord. 210, passed 2-23-2006)

**§ 34.025 GRIEVANCE PROCEDURES.**

(A) *Formal grievance procedure.* The formal grievance procedure applies exclusively to suspensions over 5 days, involuntary demotion and dismissal of classified employees.

(1) *Written notification.* The department head shall present the classified employee with written notification of intent to suspend over 5 days, demote or dismiss 3 working days in advance of the proposed action. The written notification shall explain the reasons for the proposed action, the evidence supporting the decision and the employee's right to a pre-disciplinary hearing. The notification shall be hand delivered to the employee and signed by the employee when at all possible. If not possible, the notification shall be sent to the employee by certified mail, return receipt requested.

(2) *Administrative leave with pay.* In cases where village property, village employees or citizens are at risk because of the employee's actions, the employee, after the approval of the Village Manager, shall be placed on administrative leave with pay while an investigation is conducted, the appropriate disciplinary action is contemplated and until the pre-disciplinary hearing is held and the final decision is rendered by the Village Manager.

(3) *Procedure for pre-disciplinary hearings for suspension over 5 days, involuntary demotion or dismissal.* Employees shall pursue a formal grievance according to the rules contained herein.

(a) *Request for pre-disciplinary hearing.*

1. Within 3 working days of the receipt of the disciplinary notice, the employee shall notify the Village Manager in writing, indicating whether the employee shall avail himself or herself of a pre-disciplinary hearing with the Village Manager. The employee may respond to the notice of contemplated action in writing in lieu of a pre-disciplinary hearing.

2. Upon receipt of the employee's written statement indicating participation in a pre-disciplinary hearing, the Village Manager or his or her designee shall set the time, place and date of the pre-disciplinary hearing. The employee and the employee's supervisor must be advised of the scheduled pre-disciplinary hearing in writing.

(b) *Pre-disciplinary hearing procedure.* The Village Manager or his or her designee shall meet with the employee, the employee's representative and representatives of the employee's department at the appointed time. At this pre-disciplinary hearing, the employee shall have the opportunity to respond to the proposed disciplinary action. The hearing shall be held within 5 working days of the receipt of the request for the pre-disciplinary hearing by the village, unless a continuation is mutually agreed upon by both parties in writing.

(c) *Pre-disciplinary hearing decision.*

The Village Manager shall issue a decision in writing within 5 working days of the hearing. The written decision shall include the time, date, and location of the meeting, persons present, and the Village Manager's determination. The written decision shall be delivered directly to the employee (obtaining employee's signature of receipt of the decision) or be sent by certified mail, return receipt requested. The employee has the right to grieve the Village Manager's decision to the hearing officer.

(d) *Effect of the decision.* Disciplinary actions shall become effective at the time that the final decision is issued by the Village Manager.

(4) *Post-disciplinary hearings/appeals to the hearing officer.*

(a) *Notice of appeal.* Within 5 working days of receipt of the Village Manager's decision, the grievant must notify the Village Administrator in writing of the intent to avail himself or herself of a post-disciplinary hearing.

(b) *Appointment of a hearing officer.* Within 5 working days of the grievant's notification of intent to pursue a post-disciplinary hearing, the village shall provide the grievant the name of a proposed hearing officer.

(c) *Hearing officer qualifications.* The hearing officer must be familiar with public or private personnel systems, or have pertinent experience in the appropriate areas of management or law. The hearing officer cannot be an employee or former employee or former or current elected official of the Village of Milan.

(d) *Post-disciplinary hearing scheduled.* The post-disciplinary hearing must be held as soon as possible, but not to exceed 30 days of the receipt of notification of the employee's request for a post-disciplinary hearing by the Village Manager. The parties must agree in writing to any postponement of the grievance hearing beyond the 30 days. At this hearing, the grievant shall have an opportunity to

present witnesses and physical evidence and cross-examine the village's witnesses before the hearing officer. The grievant, at his or her own expense, may have legal counsel represent him or her.

(5) *Procedures for post-disciplinary hearings.*

(a) The hearing officer shall determine the date, time and location of the post-disciplinary hearing and grant continuances agreed to by both parties. The hearing shall be conducted at a time and place which is mutually convenient to all parties. Requests for continuances of hearings shall be made in writing to the Village Manager with a copy to the opposing party at least 5 working days prior to the scheduled hearing, absent extenuating circumstances.

(b) Notice of the hearing shall be sent by certified mail to the grievant and postmarked at least 10 days prior to the scheduled hearing. Copies of the hearing notice shall be sent concurrently to all relevant parties.

(c) Post-disciplinary hearings shall be conducted as open meetings with notice given to the public pursuant to the New Mexico Open Meetings Act, and the Village of Milan's Open Meeting Resolution unless the parties agree to have a closed meeting.

(d) The hearing officer shall:

1. Determine the order of agenda items;
2. Rule on procedural and substantive issues of the hearing;
3. Determine the admissibility of evidence and testimony, all of which must have a direct bearing on the issue according to the evidentiary standard for administrative agencies. (The New Mexico Rules of Evidence shall be liberally interpreted); and
4. Issue written findings of fact and conclusions of law.

(e) The following persons are required to be present at all formal personnel hearings: the grievant, grievant's representative (if any), and the village's designated representative.

(f) The parties shall stipulate to the facts and issues to the greatest extent possible prior to the hearing.

(g) Prior to the formal hearing, the parties shall prepare copies of all exhibits and evidence which are expected to be presented. The parties shall stipulate to exhibits to the extent possible and bring to the hearing adequate copies for the hearing officer and opposing party.

(h) At least 5 working days prior to the formal hearing, all parties shall submit to the hearing officer a statement identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence.

(i) Witnesses in formal grievance hearings shall not be admitted into the hearing room until called upon to testify, except those who are required to be present pursuant to division (A)(5)(e) above.

(j) All formal hearings shall be recorded.

(k) The village may have legal representation at the formal hearing, even if the grievant is not represented by counsel.

(6) *Presentation order.*

(a) *Opening statement of issues.* The village shall present its statement of issues, followed by the grievant.

1. *Village's presentation.*

Witnesses for the village shall be called and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the grievant shall have the opportunity to cross-examine

the witness. The hearing officer shall then have the opportunity to question the witness on matters related to the witness's testimony. Follow up or redirect questioning shall be allowed at the discretion of the hearing officer.

2. *Grievant's presentation.*

Witnesses for the grievant may be called and questioned on their involvement in, or knowledge of the case. Following each witnesses testimony, the village shall have the opportunity to cross-examine the witness. The hearing officer shall then have the opportunity to question the witness on matters related to the witness's testimony. Follow up or redirect questioning shall be allowed at the discretion of the hearing officer.

(b) *Rebuttal testimony.* Following presentation of the grievant's position, the village may offer rebuttal testimony. The testimony must be brief and shall address only the issues brought forth in the grievant's presentation.

(c) *Closing statements.* The village's closing statement shall be presented, followed by that of the grievant. These statements shall not exceed 10 minutes without the permission of the hearing officer, and at a minimum shall contain a request for the desired outcome. The village shall have the opportunity to make a final statement, not to exceed 5 minutes, and must be limited to issues brought forth in the grievant's closing statement.

(d) *Hearing officer.* The hearing officer may require the parties to prepare proposed findings of fact and conclusions of law and or closing argument.

(7) *Hearing officer's decision.* The hearing officer shall prepare written findings of fact and conclusions of law and submit them to the parties within 30 calendar days from the date of the hearing or from the date the proposed findings and conclusions are submitted to the hearing officer by the attorneys, if requested. The hearing officer may uphold, modify, or reverse the decision of the Village Manager, and may reinstate the employee and award only back pay and benefits. The decision of the

hearing officer is binding and subject to review by petition for writ of certiorari by either party to the Thirteenth Judicial District Court of the State of New Mexico. The record of the proceedings shall be retained by the Village Manager's office for a period of not less than 1 year from the hearing date, along with all of the physical evidence admitted by the hearing officer. The verbal record shall be transcribed only in the case of appeal to the district court by 1 of the respective parties. The party requesting the transcript shall pay the cost of the transcript.

(B) *Informal grievances.* The purpose of informal grievance procedures is to provide employees, in an atmosphere of courtesy and cooperation, an equitable solution to problems or complaints which may affect employees in the course of their employment with the village. When applicable, the informal grievance procedure allows employees to voice complaints concerning alleged improper actions of supervisors or management. The informal grievance procedure does not apply to suspensions over 5 days, involuntary demotions, and terminations.

(1) *Step one: meeting with department head.*

(a) The employee is required to contact his or her department head within 3 working days of the incident or action being grieved to request in writing a meeting.

(b) The department head must schedule a meeting within 3 working days of the request by the employee.

(c) Within 3 working days of the completion of the meeting, the department head shall provide the employee with a written decision.

(2) *Step two: meeting with village manager.*

(a) The employee may appeal the decision of the department head to the Village Manager in writing within 3 working days of the receipt of the department head's written decision.

(b) The employee and 1 witness of his or her choice (if desired) and the department head shall meet with the Village Manager or his or her designee to discuss the grievance within 5 working days of receipt of the written request by the Village Manager. Within 5 working days of the meeting, the Village Manager shall advise the employee of his or her decision in writing. The Village Manager's decision shall be final.

(C) *Conditions or actions not grievable.* The following are not grievable.

(1) Employee complaints of discrimination or harassment based on race, color, religion, sex, sexual orientation, age, national origin, physical or mental disability or serious medical condition. These should be reported directly to the Village Manager or Mayor who shall investigate and resolve in compliance with § 34.024.

(2) Matters where the village is without authority to act or does not have the ability to provide a remedy.

(3) Dismissal of probationary employees.

(4) Release of temporary or casual employees prior to or at the end of their anticipated employment period.

(5) Dismissal of appointed employees at any point during their employment with the village.

(6) Transfers, temporary assignments, removal from temporary assignments and promotions.

(7) Performance appraisals, verbal reprimands or selection for vacant positions.

(8) Change of schedules as required by department.

(Ord. 210, passed 2-23-2006)

**BENEFITS****§ 34.040 COMPENSATION AND BENEFIT PROGRAM.****(A) Position classification.**

(1) The classification plan is a way of making "equal pay for equal work" a firm village policy. Where there is an important similarity of duties performed and responsibilities assumed, the classification plan ensures that the same employee qualifications shall be required and the same pay schedules shall be applied.

**(2) The classification plan is used:**

(a) As a guide in recruiting and examining applicants for village employment;

(b) In determining pay ranges for various types of work;

(c) In describing career ladders and employee development programs;

(d) In budgeting payroll costs; and

(e) In providing a common terminology for all village employees and officials and the general public.

(B) *Pay plan.* The pay plan assigns pay ranges to varying levels of expertise and responsibility outlined by grades in the classification plan. The amount of money paid to employees depends on the money appropriated by the Village Board of Trustees for payroll costs in the village's budget. The pay plan consists of pay grades, which specify pay ranges for each job assigned to that grade. The actual pay range assigned to each grade and the wage assigned are determined after consulting several salary surveys. The surveys are to learn what other employers in the Los Lunas area and other cities are paying their workers.

(C) *Hours of work.* Full-time employees are expected to work 80 hours per pay period. All employees shall work their scheduled hours pursuant to work schedules established by their department heads. Except as otherwise provided, employees shall not be paid for travel time from home to the site of their work within the Village of Milan or from the work site to their home. Actual work periods may fluctuate at the discretion of the department head.

(D) *Breaks.* Full-time employees take a 1 hour unpaid lunch break. Law enforcement officers, and firefighters receive a paid meal break. Full-time employees may take two 15-minute breaks per day, workload permitting. Employees working 4 hours per day may take one 15-minute break per day, workload permitting. Only supervisors can determine whether breaks should be limited or delayed because of an emergency or unusual conditions. Break time does not accrue for use at a later time or later date. Breaks should be taken in the immediate vicinity of the worksite unless otherwise approved by the supervisor. Breaks cannot be substituted for other time off.

(E) *Work week.* The village's work week begins on Monday at 12:00 a.m., and ends on Sunday at 11:59 p.m.

(F) *Pay periods.* Employees are paid every 2 weeks on Friday. The payroll period consists of 2 consecutive work weeks. All department heads shall report to the village administration office all hours worked and all absences, paid and unpaid, for each employee during the pay period by 11:00 a.m. on the Friday prior to payday. The payroll clerk, with administrators approval may require submission of reports in advance of Friday due to holiday schedule. Paychecks are accompanied by a statement listing gross pay and itemized deductions. If payday falls on a holiday, employees shall receive pay on the day before the holiday. Employees shall not be paid for time not worked.

(G) *Payroll deductions.* The village is required by federal and state law to make payroll deductions for income tax, social security deductions and other statutorily-mandated purposes. To avoid problems

with either federal or state agencies, each employee shall report any changes in family status to the payroll department. All new employees are required to participate in the village's payroll direct deposit program, only employees approved by the Village Manager may have checks mailed to their place of residence.

(H) *Retirement benefits.* Eligible village employees are required to participate in the Village of Milan retirement program upon date of hire. The details of the program may be obtained from the village administration office.

(I) *Insurance benefits.* The village provides full-time employees with the opportunity to purchase medical insurance, life insurance, dental insurance, and accidental death and dismemberment benefits to its full-time employees, the cost of which is shared by the village and the employee. The employee's share is made through payroll deductions. Insurance plans may be changed at the discretion of the Village Board of Trustees. Specific details about eligibility and enrollment can be obtained from the village administration office.

(J) *Compensatory time off.* Compensatory time off is given to FLSA nonexempt employees for hours worked beyond 40 hours of actual work and to nonexempt police and firefighters who work more than 86 hours in a 2-week period. Holidays, annual leave, sick leave and all other paid leave time are not considered hours worked for purposes of calculating and accruing compensatory time off. A nonexempt employee shall accrue compensatory time at the rate of 1-1/2 hours of time off for each hour over 40 hours of actual time worked per week (86 hours for firefighters and police officers in a 2-week period). Overtime hours worked and compensatory time hours accrued and used shall be recorded for each nonexempt employee and submitted to the payroll department each pay period on approved forms.

(1) Nonexempt employees may accrue a maximum balance of 120 hours of compensatory time for 80 hours of overtime actually worked in any given pay period.

(2) The village will require an employee to use accrued compensatory time before annual leave is granted. All compensatory time must be used within a 30-day period.

(3) The department heads are responsible for authorizing, monitoring and limiting the use of overtime. Excessive overtime shall be considered in evaluating the performance of department heads.

(4) Compensatory time must be used with prior approval of the department head or supervisor. Approval is subject to the village's work needs.

(5) Any portion of an hour shall be computed and paid to the next 1/4 of an hour.

(6) Upon termination, the employee shall be paid for the unused balance of compensatory time owed.

(7) Employees shall not work overtime without supervisory permission. Failure to obtain permission to work overtime shall lead to disciplinary action.

(8) Nonexempt employees shall not be permitted to work overtime and donate it to the village.

(K) *Final pay check.* An employee who resigns shall receive a final pay check on the first regularly scheduled payday following the employee's effective date of resignation. Any employee who is dismissed shall receive a final paycheck no later than 5:00 p.m. on the fifth day following dismissal, with deductions for any unreturned village property. The employee's rate of pay after deductions for unreturned property will not be less than the minimum hourly wage. Day 1 begins the day of dismissal and includes Saturday and Sunday. In case of death, final salary and compensation for unused annual, sick leave and compensatory time shall be paid to the employee's named beneficiary, or if unnamed, to the employee's estate, as specified on the PERA beneficiary form.

(L) *Personal safety equipment.* An employee in a designated job with the village may be required to wear special uniforms, equipment or clothing to perform the job function. Certain items of equipment or clothing may be paid for by the village and must be returned to the village at the employee's separation from village employment. (See Safety Manual.)

(M) *Gratuities.* All village employees are prohibited from accepting gifts or other considerations from vendors given with the intent of modifying the employees' performance of duties or encouraging the employees to make purchases from the vendor involved. Employees shall maintain the highest moral standards and any attempt to influence an employee's performance by a vendor or other person shall be reported to the department head.

(N) *Per diem and mileage.* All payments of per diem and mileage allowance to village employees shall be made pursuant to policies established by the State of New Mexico. In no event shall any mileage be paid for travel by a village employee in connection with the employee's regular job duties within the boundaries of the Village of Milan without the express written consent of the department head.

(O) *Time sheets.* The village must keep accurate records of each hour worked by nonexempt employees. The department head shall forward the payroll time register for that department to the payroll office on alternate Fridays by 11:00 a.m. The payroll department shall keep a cumulative record of all leave time accrued and used. Time sheets shall be signed by the employee and by the employee's immediate supervisor. If a time sheet lacks a required signature, the paycheck shall be prepared and shall be held until the necessary signature is obtained or special authorization is provided by the department head. Time sheets must be submitted prior to issuance of the paychecks. No employee is permitted to record time for another employee. Any employee intentionally reporting time not worked for himself, herself or another employee shall be disciplined up to and including dismissal.

(P) *Company vehicle.*

(1) All village employees who drive a village vehicle to and from work will have this benefit calculated using the Commuting Valuation Rule - IRS Reg. 1.61-21(f).

(2) The village take-home vehicle is to be used for business purposes only and under no circumstances shall the take-home vehicle be used for personal use.

(3) Any abuse of the take-home vehicle privilege must be reported to the department head who will, if necessary, exercise disciplinary action. (Ord. 210, passed 2-23-2006)

#### § 34.041 LEAVE AND HOLIDAYS.

(A) *Authorized leave.*

(1) Leave is any authorized absence, with or without pay, during regularly scheduled work hours which is approved by the department head or supervisor.

(2) The department head or supervisor is responsible for the maintenance and transmittal of leave records to the payroll office.

(B) *Unauthorized leave.* Absence without approved leave is subject to disciplinary action and loss of pay.

(C) *Holidays.*

(1) The Village of Milan establishes its holiday schedule consisting of 12 holidays and 1 personal day in December of each year. Holidays may include the following:

New Year's Eve Day	Columbus Day
New Year's Day	Veteran's Day
Martin Luther King Day	Thanksgiving Day

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Good Friday	The Day After Thanksgiving Day
Memorial Day	
Independence Day	Christmas Eve Day
Labor Day	Christmas Day
	One Personal Holiday

(2) The following conditions shall apply with respect to holidays and holiday pay:

(a) When a legal holiday observed by the village falls on a workday, full-time employees shall receive 8-hours' holiday pay and part-time employees shall receive 4 hours of holiday pay for the hours worked on that particular day.

(b) Temporary and casual employees will receive holiday pay if they have worked a minimum of 160 hours.

(c) When a holiday falls on an employee's day off, the employee's holiday shall be observed on the following work day, work load permitting as determined by the department head, or compensated for on the next paycheck.

(d) When a holiday falls during an employee's annual leave, the day shall be counted as a holiday and not a vacation day.

(e) In order to receive pay for a designated legal holiday, employees must be in a work or paid leave status on their scheduled work day immediately preceding and following the holiday, or must have worked on the stated holiday. An employee absent without leave on their scheduled work day before or after a holiday shall not receive pay for that holiday.

(f) When a holiday falls on a Saturday, it shall be observed on the preceding Friday. If the holiday falls on Sunday, it shall be observed on the following Monday.

(g) If non-exempt employees are required to work on a holiday, the employees shall be paid 1-1/2 times their base pay for all hours worked, plus the employee's regular holiday pay.

(h) Employee's on unpaid leave of absence shall not receive holiday pay.

(D) *Annual leave with pay.*

(1) *Accrued annual leave.* Employee's in classified positions accrue annual leave from their date of hire according to the following schedule:

<i>Classified positions, full-time and part-time employee</i>		
<i>Years of Service</i>	<i>Hours Accrued per Year</i>	<i>Hours Accrued per Year</i>
Date of hire through the end of the fifth year of continuous employment	96 hours (12 days)	48 hours (6 days)
Beginning with the sixth year through the end of the tenth year of continuous employment	120 hours (15 days)	48 hours (6 days)
Over 10 years of continuous service	144 hours (18 days)	48 hours (6 days)



(2) *Generally.*

(a) Annual leave begins to accrue with the employee's third payroll period. Accrual is calculated in the first pay period of each month.

(b) An employee does not accrue annual leave for any time worked in excess 40 hours per week.

(c) Annual leave shall not be granted in advance of accrual.

(d) Upon termination from village employment, an employee will be paid for all accrued annual leave.

(e) An employee may use accrued annual leave just before the employee's separation from village employment.

(f) Annual leave must be requested as much in advance as possible. Reasonable effort shall be made to accommodate the employee's request, though approval shall be subject to advance notification and the needs of the department.

(g) Employees shall be allowed to accumulate up to 200 hours of leave, equal to 25 regular working days, accumulations above this amount must be approved in writing by the Village Manager at the end of each calendar year before December 31.

(h) Temporary, and casual employees do not accrue annual leave.

(E) *Sick leave.*

(1) *Sick leave with pay.* Leave with pay is granted to employees in a classified position, personal illness, pregnancy or disability, or when an employee's child or spouse, or parent requires the

personal attention of the employee because of a serious injury or illness as defined in the Family and Medical Leave Act.

(a) Full-time employees begin to accrue sick leave after the third payroll period. At the rate of 8 hours per month for full-time employee's and at a rate of 4 hours for part-time employee's accrual is calculated in the first pay period of each month.

(b) Accrued sick leave may be accumulated year-to-year to a maximum of 576 hours.

(c) Sick leave is not granted in advance of accrual.

(d) There shall be no pay for sick leave upon resignation, lay-off or involuntary dismissal. After 5 years and 3 months of continuous employment, employees are entitled to current payment of 1/2 their rate of pay up to 96-hours' accrued sick leave of their employment.

(e) Employees shall receive 1/2 of their current rate of pay for a maximum of 96-hours' accrued sick leave in excess of 480-hours' accrued sick leave each December.

(f) Immediately prior to retirement from village service, an employee of the village who has accumulated 576 hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to 50% and 76% of hourly wage multiplied by the number of hours of unused sick leave over 576 hours, not to exceed 400 hours of sick leave.

(g) Temporary and casual and part-time employees do not accrue sick leave.

(h) Any employee making a false claim for sick leave or who refuses to be examined by a physician may be dismissed.

(i) Patterns of sick leave usage may result in supervisor or department heads requiring documentation or certification of a licensed physician.

(j) Planned use of sick leave must be requested to the supervisor or department head as much in advance as possible.

(k) In the case of an extended illness, an employee may use accrued compensatory time, annual leave in that order.

(2) *Physical examination.* The village may request that an employee have a medical examination when it appears to the supervisor or department head that the employee cannot perform the essential functions of his or her position, when a pattern of sick leave develops or when an employee advises the supervisor or department head that he or she cannot perform his or her job for medical reasons. The village shall pay for the examination. An employee who refuses to be examined by a physician designated by the village shall not receive sick leave pay for the claimed period of absence and may be dismissed. Employees who cannot perform the essential functions of their positions shall be terminated if reasonable accommodation creates an undue hardship or if the employee poses a safety threat to other village employees, the public or to himself or herself.

(3) *Reporting sick leave.* Sick leave shall be reported to the administrative office by the employee or an immediate family member on a daily basis and as soon as possible but no later than 15 minutes after the beginning of the employee's work shift unless the nature of the illness requires extended leave certified by the employee's physician and of which the employee's supervisor has been notified.

(4) *Use of sick leave during probationary period.* Probationary employees accrue sick leave. Use of sick leave must be approved by the employee's supervisor on a day-by-day basis during the probationary period.

(5) *Donation of leave time for non-work-related serious injury or illness.* Village employees who have accumulated annual leave time under division (D) or sick leave time under division (E)(1) may, but are not required or urged to, donate the time to other village employees. These donations shall be made under the terms and conditions specified below:

(a) Non-probationary village employees who have accumulated more than 80 hours of annual leave may donate up to 16 hours per employee of that annual leave or sick leave time to other non-probationary village employees who have exhausted all annual leave, sick leave or compensatory time due to a non-work related serious injury or illness.

(b) The employee in need of donated time must make a request for the time in writing to the department head, who shall inform village employees of the request.

(c) Donations of time shall be made on forms provided by the village, signed by the donating employee and witnessed by the department head. Donations of time shall be in hourly increments. The receiving employee shall be paid at his or her hourly rate of pay for donated time, not at the donor's rate.

(d) Donated time accrues to the employee receiving the donation and time will not be returned, if not used. Under no circumstances shall time donated to any employee exceed the maximum time allowed under division (E)(1) (sick leave).

(e) Donations of time are completely voluntary. No employee, supervisor or elected official shall demand the donation of time from any employee, although a request from an employee may be communicated to other employees.

(f) Terminated employees are ineligible to receive donations.

(g) No right of donation is hereby created in any employee, regardless of circumstance.

(F) *Family and Medical Leave of Absence (FMLA).*

(1) *Eligibility.*

(a) To be eligible for family and medical leave benefits, an employee must have worked for the village for a total of at least 12 months and have worked at least 1,250 hours over the previous 12 months. Eligible employees may receive up to a total of 12 work weeks of unpaid leave during a 12-month period (measured backwards from the date the leave is first to commence) for 1 or more of the following reasons:

1. The birth of the employee's child;
2. The placement of a child for adoption or foster care;
3. To care for an immediate family member (spouse, child or parent) with a serious health condition; or
4. To take medical leave when the employee is unable to work because of a serious health condition.

(b) All time taken off from work for any of the above reasons shall be counted against the remaining balance of FMLA leave.

(c) Leave for the birth, adoption or placement in foster care of a child must be completed within 12 months of the applicable event.

(2) *Required use of accrued leave.* The village shall require an employee to use all of the employee's accrued and unused sick, annual and compensatory time to cover leave prior to going on unpaid leave.

(3) *Requesting family and medical leave and medical certification.*

(a) Employees requesting family care and medical leave shall be required to provide:

1. Thirty-day advance notice when the need for the leave is foreseeable;
2. Medical certification (both prior to the leave and prior to reinstatement);
3. Periodic recertification; and
4. Periodic reports during the leave.

(b) The medical certification must state the date the condition started, how long it is expected to last, and, if the leave is to care for an immediate family member, how long the employee shall be needed to provide care and that the serious health condition requires the employee to provide care. If the leave is for the employee's own serious health condition, the certification must also state that the employee is unable to perform the essential functions of the employee's current position. When leave is needed to care for an immediate family member or the employee's own serious health condition and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt department operations.

(c) If the employer has any doubt as to the validity of the certification, a second opinion may be required from a medical provider of the village's choice and at its expense. In addition, the village may require that a third opinion be obtained from a health care provider at the village's expense. In an event, the opinion of the third provider shall be final and binding.

(4) *Reinstatement.*

(a) An employee returning from an approved family and medical care leave of absence that does not exceed the maximum eligible length of leave shall be reinstated to his or her original

position or an equivalent one with no loss of seniority or benefits that accrued prior to taking the leave. A medical release to return to work from a leave taken because of the employee's own serious health condition may be required from the employee.

(b) Serious health condition means an illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice, residential health care facility, continuing treatment or supervision by a health care provider. An employee who does not return to work at the end of an authorized leave and does not obtain an approved extension of leave shall be regarded as having voluntarily resigned.

(c) If an employee on leave is a salaried employee who is among the top 10% of employees in terms of gross earnings and keeping the job open for the employee during the leave would result in substantial grievous economic injury to the operations of the village, reinstatement may be denied. In these cases, the village must give the employee a reasonable opportunity to return to work after notifying the employee of the intent to refuse reinstatement.

(5) *Continuation of benefits.*

(a) During an approved leave, the village shall continue to provide, if otherwise available, medical coverage under its group health plan on the same conditions that would have applied if the employee had not taken the leave. In no case shall the village continue to pay for the coverage for more than 12 weeks in any 12-month period. The employee shall remain responsible for paying the employee's portion, if any, of the insurance premium, including the premium for dependent coverage, if available. Failure to pay premiums on a timely basis may result in a lapse of coverage. If the employee fails to return to work when the leave expires, the employee shall be required to reimburse the village for the group health insurance premium paid by the village on behalf of the employee during the leave unless the employee fails to return because of a continuation, reoccurrence or onset of a serious

health condition that entitles the employee to leave under this policy or due to circumstances beyond the employee's control.

(b) No sick or annual leave shall accrue while an employee is on unpaid leave.

(6) *Intermittent leave.* Intermittent leave or reduced work schedule shall only be permitted if the employee suffers from a serious condition or if an employee's spouse, child or parent suffers from a serious condition requiring continuing medical treatment. Intermittent leave must be scheduled with the employee's supervisor in advance of the need to take intermittent leave and must not unduly affect the village's business. The village may temporarily transfer an employee requesting intermittent leave to an alternative position under certain circumstances.

(G) *Bereavement leave.* In the event of a death in the employee's immediate family, including grandparents, the employee will be permitted 2-days' leave with pay per calendar year not chargeable under any benefits. After 2 days, bereavement leave will be charged against the employee's sick leave. An employee must notify the employee's department head prior to taking the leave. Under extenuating circumstances, annual leave time may be used for bereavement purposes.

(H) *Administrative leave with pay.* Leave with pay and travel pay may be authorized by the department head to allow employees to attend training, workshops and meetings of boards and commissions when the employee's attendance is on behalf of the village and in the best interest of the village. Employees shall also receive payment for per diem, mileage and all necessary and pre-approved out-of-pocket expenses. If the employee is paid by the Board or Commission for his or her attendance in excess of per diem, the village shall pay the employee his or her regular salary less the amount received by the employee from the Board or Commission or the employee may turn over the compensation from the Board or Commission to the village. Administrative leave with pay may also be granted with the approval of the Village Manager pending disciplinary action.

(I) *Occupational injury time/workers' compensation.*

(1) *Workers' compensation.* Employees injured on the job or suffering from occupational diseases, as defined in the New Mexico Workers' Compensation Statute, shall receive workers' compensation benefits as prescribed by law. An employee will continue to receive group health coverage, group dental insurance and group life insurance with the employee and the employer paying their respective share of the premium for a period not to exceed 3 months.

(2) *Injury leave.* An employee who sustains an on the job injury shall receive paid injury leave equal to normal salary for all regularly scheduled working hours for any lost time on the job for up to 7 consecutive days. After this time, the employee's worker' compensation benefits or employee's accrued sick leave will commence.

(3) *Reporting procedure.* Any employee claiming to be entitled to compensation shall give notice in writing to the employee's supervisor regarding the alleged accident within 15 days after the employee knew, or should have known, of its occurrence, unless, by reason of his or her injury or some other cause beyond his or her control, the employee is prevented from giving notice within that time, in which case he or she shall give notice as soon as may reasonably be done and at all events not later than 60 days after the occurrence of the alleged accident.

(4) *Medical procedure.* An employee who incurs a job-related injury or illness shall follow the procedures established as designated by the Village Manager. The employee, a co-worker or supervisor must dial 911 to report the injury. The medical unit of the Los Lunas Fire Department will be dispatched to respond to the scene of the accident at which time the employee will be evaluated to determine if further medical attention is required. The medical unit will issue the authorization form required by the village for the treatment of the employee.

(5) *Return to work.* An employee must return to his or her former position or be reassigned to a comparable position if the village's physician certifies that the employee can return to work within 3 months of the injury. If an employee is unable to perform the essential functions of his or her job with reasonable accommodations at the end of 3 months, the employee may be dismissed within the guidelines of the law.

(6) *Modified work schedule.*

(a) An employee returning from workers' compensation disability may return to light duty if an appropriate position is available and the employee's physician certifies that the employee can return to a modified work schedule.

(b) Light duty is defined either as performing the same job as the employee held before the injury, or as performing the duties of another position for which the employee is qualified, for fewer than 8 hours each day or having reduced physical requirements for the full day or less than the full day.

(c) The times and conditions of light duty shall be determined by the employee's department head in conjunction with the Village Manager. All light duty assignments are temporary and shall not exceed 3 months.

(7) *Re-employment of village employees injured on the job.* A classified full-time or part-time employee, who has received benefits pursuant to the Worker's Compensation Act and who was unable to return to work during the 12-week period during which the village held the employee's position open, may apply for his or her pre-injury job, a modified job similar to the pre-injury job, or any job that pays less than the pre-injury job, provided that the employee is qualified for this job and the village is hiring. The village shall rehire the classified full-time or part-time employee provided that the employee's treating health care provider certifies that the employee is fit to carry out the job without significant risk of injury.

(J) *Civil duty leave.* An employee shall be given necessary time off with pay for the following:

(1) *Jury duty.*

(a) Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to duty if at least 1 hour of village duty can be served in that work day. If the employee does not return to work, the balance of the day shall be charged to annual leave or leave without pay.

1. The employee shall provide his or her supervisor with a copy of the summons for jury duty.

2. Employees are expected to report to work for the hours before and after jury duty.

3. Part-time and temporary employees do not receive pay for jury duty.

(b) The employees seeking pay for jury time, shall turn over to the village all compensation received from the court for serving as a juror.

(2) *Court appearance time.* Full-time and part-time employees shall be paid for court time when required by village duties or subpoenaed to appear before a court, personnel hearing officer, public body or Village Board of Trustees for the purpose of testifying in regard to village matters. If a court appearance is not required by village duties, the employee shall not receive pay unless the employee uses accrued vacation or compensatory time.

(3) *Voting.* For purposes of a national, state or local election, an employee who is registered to vote shall be granted up to 2-hours' paid leave for voting, between the time of opening and the time of closing polls. The employee's supervisor may specify the hours for the leave. This leave shall not

be granted to any employee whose work day begins more than 2 hours subsequent to the time of the opening of the polls, or ends more than 3 hours before the closing of the polls. Time off for voting shall not be used for other purposes. Department heads may inquire in the office of the County or Village Clerk to see if an employee is a registered voter before granting time off to vote.

(K) *Military leave for Reserve or National Guard duties.*

(1) *Paid military leave for Reserve or National Guard activities.* Paid military leave shall be granted for authorized Reserve or National Guard activities for a maximum of 15 working days during a 1-year period. Military leave must be requested 20 days in advance. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

(2) *Unpaid military leave.*

(a) Employees voluntarily or involuntarily serving on active duty for more than 15 working days shall be placed on leave without pay.

(b) The employee on unpaid military leave will not be allowed to use annual and sick leave.

(3) *Employees returning from unpaid military leave.* Any employee who leaves a position he or she has held with the village other than a temporary position, to enter the Armed Forces of the United States, National Guard or organized Reserve, and who serves on active duty and is honorably discharged or released from active duty to complete his or her remaining service in a reserve component, and who is still qualified to perform the duties of the village position previously held, shall be reemployed in the position or to a position of like seniority status and pay. To be reemployed in the position, the employee must make application for reemployment within 90 days after he or she is released from training or duty or within 90 days of release from hospitalization which continued after honorable discharge for a period of not more than 1 year.

(a) The returning employee shall be deemed to have accrued seniority and length of service rights for the purpose of calculating sick and annual leave as though his or her employment with the village had been continuous since the date of initial employment.

(b) The returning employee shall have all annual and sick leave accrued at the time of his or her departure for military services restored.

(L) *Inclement weather.* The Village Manager may at his or her discretion close offices and send employees home with pay due to inclement weather. (Ord. 210, passed 2-23-2006)

#### § 34.042 MISCELLANEOUS.

(A) *Chain of command.* All employees are required to follow the chain of command as presented in the organizational chart

(B) *Designated work areas.* All employees must be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the supervisor has been obtained for different work hours. Employees shall not litter work areas and shall keep them neat and clean.

(C) *Personal business.* Personal business must not be conducted during work hours while on village premises.

(D) *Safety.* The village is committed to having all work conducted in a safe manner. All safety precautions must be followed. The village's safety committee is responsible for establishing a general safety program. See the village's Safety Manual and the compliance rules and regulations for each department.

(E) *Village property.* Employees must not misuse village property, records, or other material in their care, control, custody, or remove any village property, records, or other material from the

premises of the village offices unless permission has been given by the department head. Employees must not use village property, records or equipment for personal use.

(F) *Village vehicles.* No village vehicles shall be taken out of the Village of Milan without permission of the department head, and employees must notify the department head of their destinations and itineraries. Village vehicles must be used only for village business and commuting to and from work, if required for a work-related purpose. Village vehicles shall not be used for personal business.

(G) *Dress and appearance.* Employees are constantly in the public eye, consequently it is important that the employees present the best possible image to the public. Employees should always be clean and neatly dressed in clothing suitable for their work assignments.

(H) *Personnel files.* Subsequent to hiring, a separate file shall be prepared and maintained for each employee. These records shall be kept in the administration office. It is the responsibility of each department head and the employee to ensure that the records of the employees are complete and up-to-date.

(I) *Inspection of personnel files.* Personnel files are subject to the New Mexico Public Records Act, NMSA § 14-2-1, 1978, and are open for public inspection, except records pertaining to physical or mental examinations and medical treatment of persons confined to any institution, letters of reference concerning employment, licensing, or permits, or letters of memoranda which are matters of opinion in personnel files. Any employee wanting to review his or her personnel file may do so by making arrangements with the Village Manager or his or her designee.

(J) *Additional rules.*

(1) Employees shall obey all additional rules, directives and requests stated verbally or in writing by their supervisors, their department heads or the Village Manager.

(2) Employees are required to follow all standards, rules, procedures and policies that are similar or normally expected in the workplace.

(K) *Smoking policy.*

(1) Smoking by village employees shall be prohibited in all vehicles and all interior areas of buildings owned or leased by the village.

(2) **SMOKING** is defined as a lighted cigar, cigarette, pipe or other lighted tobacco product. Smoking by an employee in violation of this policy will subject that employee to disciplinary action.

(Ord. 210, passed 2-23-2006)

**COLLECTIVE BARGAINING**

**§ 34.055 SHORT TITLE.**

This subchapter may be cited as the Village of Milan Labor Management Relations Subchapter. (Ord. 210, passed 2-23-2006)

**§ 34.056 PURPOSE.**

The purpose of the Labor Management Relations Subchapter is to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and the employees, and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens. (Ord. 210, passed 2-23-2006)

**§ 34.057 CONFLICTS.**

(A) In the event of conflict with other Village of Milan ordinances, the provisions of the Village of Milan Labor Management Relations Subchapter shall supersede other previously enacted ordinances.

(B) Village of Milan sanctioned rules and regulations, administrative directives, departmental rules and regulations and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control. (Ord. 210, passed 2-23-2006)

**§ 34.058 DEFINITIONS.**

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

**APPROPRIATE BARGAINING UNIT.** A group of employees designated by the Board for the purpose of collective bargaining.

**BOARD.** The Village of Milan Labor Management Relations Board.

**CERTIFICATION.** The designation by the Board of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

**COLLECTIVE BARGAINING.** The act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment.

**CONFIDENTIAL EMPLOYEE.** A person who devotes a majority of his or her time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

**EMERGENCY.** A 1-time crisis that was unforeseen and unavoidable.



**EMPLOYEE.** A regular, non-probationary employee of the Village of Milan.

**EMPLOYER.** The Village of Milan.

**EXCLUSIVE REPRESENTATIVE.** A labor organization that, as a result of certification by the Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining.

**FAIR SHARE.** The payment to a labor organization which is the exclusive representative for an appropriate bargaining unit by an employee of that bargaining unit who is not a member of that labor organization equal to a certain percentage of membership dues. The figure is to be calculated based on United States and New Mexico statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit under United States and New Mexico statutes and case law, including, but not limited to, all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the appropriate bargaining unit, servicing the contract, and representing all the employees in grievances and disciplinary actions.

**GOVERNING BODY.** The Village of Milan Village Board of Trustees.

**IMPASSE.** Failure of the employer and an exclusive representative, after good faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

**LABOR ORGANIZATION.** Any employee organization 1 of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations.

**LOCKOUT.** An act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

**MANAGEMENT EMPLOYEE.** An employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a **MANAGEMENT EMPLOYEE** solely because the employee participates in cooperative decision-making programs on an occasional basis.

**MEDIATION.** Assistance by an impartial third party to resolve an impasse in contract negotiation between the employer and an exclusive representative through interpretation, suggestion and advice.

**PROFESSIONAL EMPLOYEE.** An employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a **PROFESSIONAL EMPLOYEE** is of the character that the output or result accomplished cannot be standardized in relation to a given period of time.

**STRIKE.** An employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence or withholding of service in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment.

**SUPERVISOR.** An employee who devotes a majority amount of work time to supervisory duties, who customarily and regularly directs the work of 2 or more other employees, and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend actions effectively. This definition does not include individuals who perform merely routine, incidental or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates.

and does not include lead employees or employees who occasionally participate in peer review or evaluation of employees.

(Ord. 210, passed 2-23-2006)

#### **§ 34.059 RIGHTS OF EMPLOYEES.**

(A) Employees, other than management, supervisory, confidential and probationary employees, may form, join or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint, or coercion.

(B) Employees also have the right to refuse to form, join or assist any labor organization.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.060 MANAGEMENT RIGHTS.**

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer's rights shall include, but are not limited to, the following:

(A) To direct the work of, hire, promote, demote, assign, transfer, suspend, discharge or terminate employees;

(B) To determine the qualifications for employment, and the nature and content of personnel examinations;

(C) To take actions as may be necessary to carry out the mission of the employer in emergencies; and

(D) The employer retains all rights not specifically limited by a collective bargaining agreement or other statutory provision.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.061 LABOR MANAGEMENT RELATIONS BOARD; CREATED; TERMS.**

(A) The Labor-Management Relations Board is hereby created. The Board shall be composed of 3 members appointed by the Mayor and approved by the Village Board of Trustees. One member shall be appointed on the recommendation of individuals representing labor, 1 member shall be appointed on the recommendation of the Village Manager and 1 member shall be appointed on the recommendation of the first 2 appointees.

(B) Board members shall serve for a period of 1 year with terms commencing in the month of September, except in the initial appointment, which will be a shorter term effective, the same day as this subchapter. Vacancies shall be filled in the same manner as the original appointment, and the appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

(C) During the term of appointment, no Board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees or a public employer.

(D) Each Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.062 BOARD; POWERS AND DUTIES.**

(A) The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the Labor Management Relations Subchapter, including the establishment of procedures for:

(1) The designation of appropriate bargaining units;

(2) The selection, certification and decertification of exclusive representatives; and

(3) The filing, hearing, and determination of complaints of prohibited practices. This does not apply to negotiation impasse or grievances subject to the required negotiated grievance process.

(B) The Board shall:

(1) Hold hearings and make inquiries necessary to carry out its functions and duties; and

(2) Request from employers and labor organizations the information and data necessary to carry out the functions and responsibilities of the Board.

(C) The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relevant to the matter in question. The Board may prescribe the form of the subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The Board may administer oaths and affirmations, examine witnesses and receive evidence. Subject to the approval of funds, the Board may contract with a third party to assist it in carrying out its functions.

(D) The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on interpretation and applications of the subchapter are final and binding on the parties subject to the appeal process provided in § 34.074. The Board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that propose by the parties as required by law.

(E) The Board has the power to enforce provisions of the Village of Milan Labor-Management Relations Subchapter and the Board's Labor-Management Relations Rules and Regulations through the imposition of appropriate administrative remedies.

(F) The Board shall have no power to promulgate policy other than for its own operation.

(G) No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Subchapter to pay money to any labor organization that is certified as an exclusive representative. This issue of fair share shall be a permissive as opposed to a mandatory subject of bargaining between the parties.

(Ord. 210, passed 2-23-2006)

### § 34.063 HEARING PROCEDURES.

(A) The Board may hold hearings for the purposes of:

- (1) Information gathering and inquiry;
- (2) Adopting rules and regulations; and

(3) Adjudicating disputes and enforcing the provisions of the Labor Management Relations Subchapter, and rules and regulations adopted pursuant to the subchapter.

(B) The Board shall adopt regulations setting forth procedures to be followed during hearings of the Board. These regulations shall meet minimal due process requirements of the state and federal constitution.

(C) Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.

(D) All adopted rules and regulations shall be filed in accordance with applicable laws.

(E) A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.

(F) Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under this subchapter.

(G) No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views, and the method in which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained. All meetings shall be held at a village facility. Notice shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation in the Village of Milan, and notice shall be mailed at least 30 days prior to the hearing date to all persons who have made a written request for advance notice of hearings.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.064 APPROPRIATE BARGAINING UNITS.**

(A) The Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit. Appropriate bargaining units shall be established on the basis of occupational groups or a clear and identifiable community of interest in employment terms, employment conditions and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial clerical, technical, para-professional positions, professional, corrections, firefighters and police officers. Department, craft or trade designations other than as specified above shall not determine bargaining units. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. Essential factors in determining appropriate

bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to employees of their rights guaranteed by the subchapter.

(B) If the labor organization and the employer cannot agree on the appropriate bargaining unit within 30 days, the Board shall hold a hearing concerning the composition of the bargaining unit. Any agreement as to the appropriate bargaining unit between the employer and the labor organization is subject to the approval of the Board.

(C) The Board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial or confidential employees.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.065 ELECTIONS.**

(A) Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the signatures of at least 30% of the employees in an appropriate bargaining unit, the Board shall post a notice to affected employees regarding the filed petition and proceed with the process for conducting a secret ballot representation election.

(B) Once a labor organization has filed a petition with the Board requesting a representation election, other labor organizations may seek to be placed on the ballot. Any labor organization may file a competing petition containing the signatures of not less than 30% of the employees in the appropriate bargaining unit no later than 10 calendar days after the Board has posted a written notice that a petition for a representation election has been filed by a labor organization.

(C) All representation elections shall include the option for "no representation," except in a run-off election where the choice of "no representation" was not 1 of the 2 choices that received the highest votes.

(D) In the event of an election with 2 or more labor organizations on the ballot and none of the choices on the ballot received a majority of the votes cast, then a runoff election shall be held within 15 calendar days. The choices on the run-off election shall consist of the 2 choices, which received the greatest number of votes in the original election.

(E) A valid election requires that at least 40% of the eligible employees in an appropriate bargaining unit cast votes in a representation election. In an election with only 1 labor organization, and the majority of the votes cast are in favor of representation the Board shall certify that labor organization as the exclusive representative for all the employees in the bargaining unit.

(F) No election shall be conducted if an election has been conducted in the 12-month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in § 34.067(B) of this subchapter, after the expiration of the third year of a collective bargaining agreement with a term of more than 3 years.

(G) Election disputes shall be resolved by the Board.

(H) As an alternative to the provisions of division (A) of this section, the employer and a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may establish an alternative appropriate procedure for determining majority status. The procedure may include a labor organization's submission of authorization cards from a majority of the employees in an appropriate bargaining unit. The local board shall not certify an appropriate bargaining unit if the employer objects to the certification without an election.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.066 EXCLUSIVE REPRESENTATION.**

A labor organization that has been certified by the Board as the exclusive representative for employees in an appropriate bargaining unit shall represent all employees in the bargaining unit. The exclusive representative shall act for all employees in the bargaining unit and negotiate a collective bargaining agreement covering all employees in the bargaining unit. The exclusive representative shall represent the interests of all employees in the bargaining unit without discrimination or regard to membership or non-membership in the labor organization. The existence of an exclusive bargaining representative shall not prevent employees from taking their grievances through the grievance process or filing prohibited practices with the Board. Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement in effect between the employer and the exclusive representative or inconsistent with or in violation of a memorandum of understanding between the employer and the exclusive representative applicable to the day-to-day administration of the collective bargaining agreement. The exclusive representative shall be afforded the opportunity to be present at the hearings and make its views known.

(Ord. 210, passed 2-23-2006)

#### **§ 34.067 DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.**

(A) Any member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if 30% of the employees in the appropriate bargaining unit make a written request to the Board for a decertification election. A decertification election shall be valid only if at least 40% of the eligible employees in the bargaining unit vote in the election.

(B) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than

90 days and no later than 60 days before the expiration of the collective bargaining agreement, provided, however, that a request for a decertification election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than 3 years.

(C) When, within the time period prescribed in division (B) above of this section, a competing labor organization files a petition containing signatures of at least 30% of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

(D) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than 12 months subsequent to a labor organization's certification as the exclusive representative.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.068 SCOPE OF BARGAINING.**

(A) Except for retirement programs provided under the Public Employment Retirement Act, the parties shall bargain in good faith on all wages, hours and other terms and conditions of employment and other issues agreed to by the parties. The parties shall enter into a written agreement covering employment relations regarding the issues agreed to in collective bargaining.

(B) Bargaining in good faith shall not require either party to agree to a proposal or to make a concession.

(C) The obligation to bargain collectively imposed by the Labor Management Relations Subchapter shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with state statutes or federal statutes. In the event of conflict between the provision of any federal or state statutes and any agreement entered into by the employer and the exclusive representative, the former shall prevail.

(D) Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular exclusive representative, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

(E) Any agreement or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision. An arbitrator's decision shall not require the re-appropriation of funds.

(F) The parties have a requirement that a grievance procedure culminating with final and binding arbitration be negotiated. This applies only to grievances and the interpretation and application of the agreement between the parties and does not apply to negotiation impasses. The parties shall share the cost of any proceedings conducted pursuant to this section equally. Each party is responsible for paying any cost related to its witnesses and representation.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.069 NEGOTIATIONS AND IMPASSE RESOLUTION.**

(A) The following meetings shall be closed:

(1) Meetings for the discussion of collective bargaining strategy between the governing body and the employer's negotiating team preliminary to negotiations sessions;

(2) Collective bargaining sessions; and

(3) Consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

(B) The following negotiation procedures shall apply to the employer and exclusive representatives:

(1) The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.

(2) All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.

(3) Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.

(4) Tentative agreements reached during negotiations will be reduced to writing, dated and initialed by each team spokesperson. The tentative agreements are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.

(5) Agreement on contract negotiations is accomplished when the union president and the Village Manager sign the agreement. Provisions in multi-year agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

(C) The following impasse procedure shall be followed by the employer and exclusive representative:

(1) If an impasse occurs, either party shall request mediation assistance. If the parties cannot agree on a mediator, either party may request the assistance of the federal mediation and conciliation service; and

(2) If the impasse continues after 30 calendar days, either party may request an unrestricted list of 7 arbitrators from the federal mediation and conciliation service. The parties shall choose 1 arbitrator by alternately striking names from the list. Which party strikes the first name shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues no later than 30 calendar days after the arbitrator has been notified of his or her selection by the parties. The arbitrator's decision shall be limited to a selection of 1 of the 2 parties' complete, last, best offer. However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's costs incurred pursuant to this section equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

(3) In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the employer to increase any employees' levels, steps or grades of compensation contained in the existing contract. (Ord. 210, passed 2-23-2006)

**§ 34.070 EMPLOYERS; PROHIBITED PRACTICES.**

(A) A public employer or his or her representative shall not:

(1) Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

(2) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under the Labor Management Relations Subchapter;

(3) Dominate or interfere in the formation, existence or administration of any labor organization;

(4) Discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in a labor organization;

(5) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given any information or testimony under the provisions of the Labor Management Relations Subchapter or because an employee is forming, joining or choosing to be represented by a labor organization;

(6) Refuse to bargain collectively in good faith with the exclusive representative;

(7) Refuse or fail to comply with any provisions of the Labor Management Relations Subchapter, Board regulations, or the Public Employee Bargaining Act; or

(8) Refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

(B) During the negotiation and the impasse procedure, Village Board of Trustees and management employees are prohibited from negotiating issues which are the subject of negotiations and from making any offers, commitment or promise whatsoever to employees or the exclusive representative, other than through the appointed village negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

(Ord. 210, passed 2-23-2006)

**§ 34.071 EMPLOYEES AND LABOR ORGANIZATIONS; PROHIBITED PRACTICES.**

(A) An employee, a labor organization or its representative shall not:

(1) Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex or national origin;

(2) Solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;

(3) Restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Subchapter;

(4) Refuse to bargain collectively in good faith with the employer;

(5) Refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

(6) Refuse or fail to comply with any provision of the Labor Management Relations Subchapter;



(7) Picket homes or private businesses of employees, appointed individuals, or elected officials of the Village of Milan; or

(8) Restrain or coerce the employer in the selection of its agent for bargaining.

(B) During the negotiation and the impasse procedure the employees, the exclusive representative or any of its employees are prohibited from negotiating issues which are the subject of negotiations with anyone other than the appointed village negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

(Ord. 210, passed 2-23-2006)

**§ 34.072 STRIKES AND LOCKOUTS PROHIBITED.**

(A) No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage or support a strike. The employer shall not cause, instigate or engage in an employee lockout.

(B) The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

(C) The Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of the causation or instigation. A strike means an employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence or withholding of service in whole or in part from the full, faithful and proper performance of the

duties of employment for the purpose of inducing, influencing, or coercing a change in the working conditions, compensation, rights, privileges or obligations of employment.

(Ord. 210, passed 2-23-2006)

**§ 34.073 AGREEMENTS VALID; ENFORCEMENT.**

All collective bargaining agreements and other agreements between the employer and exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this Labor Management Relations Subchapter.

(Ord. 210, passed 2-23-2006)

**§ 34.074 JUDICIAL ENFORCEMENT; STANDARD OF REVIEW.**

(A) The Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Subchapter, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Board and take appropriate action to enforce it unless the Court concludes that the order is:

- (1) Arbitrary, capricious or an abuse of discretion;
- (2) Not supported by substantial evidence on the record considered as a whole; or
- (3) Otherwise not in accordance with law.

(B) Any person or party, including any labor organization, affected by a final regulation, order or decision of the Board, may appeal to the District Court for further relief. All appeals shall be based upon the record made at the Board hearing. All appeals to the District Court shall be taken within 30 calendar days of the date of the final regulation,

order or decision of the Board. Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

- (1) Arbitrary, capricious or an abuse of discretion;
- (2) Not supported by substantial evidence on the record taken as a whole; or
- (3) Otherwise not in accordance with law. (Ord. 210, passed 2-23-2006)

**SEXUAL HARASSMENT, SEX DISCRIMINATION AND RETALIATION PREVENTION POLICY AND PROCEDURES**

**§ 34.085 INTRODUCTION.**

(A) It is the position of the village that acts of sexual harassment, sex discrimination and retaliation for reporting those acts are wrong and will not be tolerated. These acts violate federal and state laws, and village rules and regulations. The village has a zero tolerance policy regarding sexual harassment and will strictly enforce this policy. This policy applies to all employees of the village.

(B) A productive workplace offers an atmosphere where everyone can do their best, free of sexual harassment, sex discrimination and retaliation. All employees should be treated with dignity at work. The village depends on a professional work environment built on mutual respect. When that respect is maintained, employees are happier, more productive, and more efficient. Sexual harassment on the other hand, destroys the framework that is necessary for an organization to function properly.

(C) All employees are required to be familiar with the contents of this subchapter in order to eliminate behavior that is considered to be a form of sexual harassment. (Ord. 210, passed 2-23-2006)

**§ 34.086 PURPOSE.**

This subchapter establishes procedures and provides information to the village employee regarding sexual harassment so that you can recognize, prevent, respond appropriately and report the acts if it happens to you, a co-worker, your employees or a citizen of the village. (Ord. 210, passed 2-23-2006)

**§ 34.087 DEFINITIONS.**

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

**COMPLAINT.** Verbal or written expression of grievance or dissatisfaction.

**DISCRIMINATE.** To make a difference in treatment or favor one over another on a basis other than individual merit.

**EEOC.** Equal Employment Opportunity Commission.

**HOSTILE ENVIRONMENT.** Comments, actions or objects that are directed to an individual because of the sex of that individual that unreasonably interfere with work performance or create an intimidating, hostile or offensive work environment.

**NMORO.** New Mexico Human Rights Office.

**QUID PRO QUO.** Something given or received for something else.

**RETALIATION.** Something done as a punishment or to gain revenge. To discriminate against an individual because that individual has opposed or complained about employment practices that the individual reasonably believes are discriminatory, or has cooperated with an investigation of any complaint.

**SEX DISCRIMINATION.** Failing to hire, disciplining, discharging or otherwise adversely affecting the terms, conditions, or privileges of an individual's employment because of the individual's sex.

**SEXUAL HARASSMENT.** Unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, or acts of gender-based animosity toward employees, applicants for employment or citizens who come into contact with employees of the village.

**SUPERVISOR.** Any employee who holds supervisory or management authority over village employees.  
(Ord. 210, passed 2-23-2006)

#### § 34.088 POLICY.

The village is committed to enforcing a policy prohibiting sex discrimination, sexual harassment and retaliation.

(A) Employees and applicants for employment are not subjected to sex discrimination or sexual harassment.

(B) Employees do not subject citizens to sexual harassment, including unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, or acts of gender-based animosity.

(C) Employees or applicants for employment are not retaliated against for opposing or filing complaints about employment practices they reasonably believe are discriminatory, or cooperating with the investigation of any complaint.

(D) All complaints of sex discrimination, sexual harassment or retaliation filed by employees, applicants for employment or citizens are investigated fairly and promptly.

(E) The village takes appropriate disciplinary action, up to and including termination of employment, against:

(1) Employees who engage in acts of sex discrimination, sexual harassment or retaliation; and

(2) Supervisors who engage in that conduct, or who fail to promptly report or take action to prevent that conduct from occurring among employees under their supervision.

(F) The village takes prompt and effective steps to remedy and prevent acts of sex discrimination, sexual harassment and retaliation.  
(Ord. 210, passed 2-23-2006)

#### § 34.089 RESPONSIBILITY.

(A) *Village Manager.*

(1) The Village Manager is responsible for administering the village's sexual harassment prevention program. The major components of the program are prevention awareness, training and investigation.

(2) Specific responsibilities consist of:

(a) Evaluate on a continuing basis, report on and make recommendations for improving the village's effectiveness in eliminating sex discrimination, sexual harassment and retaliation from the workplace.

(b) Investigate or monitor the investigation of all complaints filed by employees and applicants for employment in the village that are filed with or referred to the administration office concerning sex discrimination, sexual harassment and retaliation, and make recommendations for appropriate remedial relief and disciplinary action.

(c) Investigate or monitor the investigation of all complaints filed or referred to the administration office alleging that an employee of the

village has subjected a citizen to sexual harassment and make recommendations for appropriate remedial relief and disciplinary action.

(B) *Department heads and supervisors.*

(1) Supervisors and managers shall not engage in sex discrimination, sexual harassment or retaliation, and shall monitor employees under their supervision to ensure that those employees are not engaging in any conduct.

(2) If a department head or supervisor receives a complaint or otherwise becomes aware of any conduct, he or she will report it to the Village Manager as soon as practicable. However, the department head or supervisor must notify the Village Manager no later than the close of business of the next business day after receiving the complaint or becoming aware of the conduct.

(3) Department heads and supervisors who engage in sex discrimination, sexual harassment or retaliation, permit any conduct to occur among employees under their supervision, fail to report the conduct or retaliate against any person for opposing or filing a complaint for the conduct or cooperating with an investigation of any complaint will be subject to disciplinary action.  
(Ord. 210, passed 2-23-2006)

**§ 34.090 RECOGNIZING SEXUAL HARASSMENT AT WORK.**

(A) *Types of sexual harassment.* The Equal Employment Opportunity Commission (EEOC) and courts have defined 2 types of sexual harassment.

(1) *Quid pro quo (exchange something for something).* This is when submission to, or rejection of sexual advances is used as a basis for employment decisions such as pay increases, hiring or firing, promotions and performance appraisals.

(2) *Hostile environment.* This refers to sexual comments, physical touching or objects that are directed to an individual because of the sex of

the individual and that unreasonably interfere with work performance or that create an intimidating, hostile or offensive work environment.

(B) *Conduct that may constitute sexual harassment.*

(1) Sexual harassment includes unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature or acts of gender-based animosity toward employees, applicants for employment or citizens who come into contact with employees of the village.

(2) No employee in the village shall threaten or suggest either explicitly or implicitly that another employee's refusal to submit to any form of sexual advances will in any way affect the terms and conditions of that persons employment. In addition, an individual's submission to or rejection of any form of sexual advances shall not be used as a basis for employment decisions affecting the individual. No employee shall engage in behavior of a sexual nature that reasonably may be offensive to another employee, interfere with another employee's work performance or create an intimidating, hostile, humiliating or offensive work environment. Finally, no employee shall subject a citizen to any form of sexual harassment.

(C) *Common forms of sexual harassment.* While it is not possible to list all behaviors that may be considered sexual harassment, the following examples include:

(1) *Physical.*

(a) Unwanted touching of a person's body, hair or clothing, such as touching, holding, grabbing, hugging, patting, fondling, stroking, kissing, massaging or pinching;

(b) "Accidental" collisions or brushing up against a person's body;

(c) Physical assault; or

(d) Sexual assault.

(2) *Verbal.*

(a) Unwelcome sexual advances or propositions;

(b) Obscene or lewd sexual comments, jokes or suggestions;

(c) Threats;

(d) Conversations filled with sexual innuendo and double meanings;

(e) Comments about a person's body or sexual activities, deficiencies or prowess;

(f) Asking about a person's sexual behavior preferences, or history; or

(g) Sexually explicit, offensive or degrading words used to describe a person.

(3) *Non-verbal/mental behavior.*

(a) Offensive gestures or motions;

(b) Cornering or blocking a person's path;

(c) Leering at someone or looking a person up and down;

(d) Leaning over someone at a desk;

(e) Displaying or circulating sexually suggestive cartoons, letters, magazines, videos or pictures; or

(f) Drawing graffiti of a sexual nature.

(Ord. 210, passed 2-23-2006)

**§ 34.091 RESPONDING TO SEXUAL HARASSMENT.**

(A) *General.*

(1) Stopping sexual harassment starts with taking action.

(2) It's each employees responsibility to respond promptly and appropriately if it happens to them or someone they work with.

(B) *Responsibility.*

(1) Victims of unwanted sexual attention or behavior should:

(a) Respond by making their feelings known. Calmly tell the harasser that the comments or behavior are unwanted and that they want them to stop. Responding quickly to unwelcome behavior is the best way to prevent sexual harassment from escalating. If the employee feels uncomfortable addressing the problem with the harasser, they should inform their supervisor of the unwanted behavior and ask that he or she resolve the problem.

(b) Record the specifics of the incident and any further incidents including the time, place and others who may have witnessed the behavior or their reactions. Write down the exact words or actions that were used.

(c) Report harassment promptly to their supervisor. Their report can be either verbal or in writing. If the supervisor is the one harassing then report it to the department head, another supervisor or the Village Manager.

(2) If an employee observes sexual harassment, they must take it seriously. Here are some guidelines to follow when helping a co-worker:

(a) If necessary, help the victim to get out of the situation safely;

(b) Encourage the victim to express his or her feelings to the offender by stating that the conduct was unwelcome and uncomfortable;

(c) Offer support in reporting the incident. If the victim does not report the incident, then the witness should report the incident to the supervisor or management; and

(d) Follow this policy to report sexual harassment.

(3) (a) Complaints of sexual harassment will be taken seriously. By doing so, all employees will see that the village is thorough, nonjudgmental and unbiased when it comes to handling sexual harassment complaints. Department heads and supervisors can be held personally liable for not taking appropriate action to respond to or eliminate the behavior from the work place.

(b) Supervisors are to follow these general guidelines:

1. Request that the complainant put the complaint in writing;
  2. Report the complaint immediately to the Village Manager;
  3. Take action to control the situation, if necessary, while the investigation is pending. Work with the Village Manager to provide a prompt response to the situation; and
  4. Be sensitive to the issue and to those involved.
- (Ord. 210, passed 2-23-2006)

**§ 34.092 FILING, RESPONDING TO AND INVESTIGATING EQUAL EMPLOYMENT OPPORTUNITY.**

*(A) General.*

(1) Individuals are encouraged to contact their supervisor, or the Village Manager directly and confidentially at any time to discuss concerns or file a complaint regarding sex discrimination, sexual harassment or retaliation in the Village of Milan.

(2) The following complaints are considered Equal Employment Opportunity (EEO) complaints.

(a) Complaints filed by employees or applicants for employment in the village alleging that they have been subjected to acts of sex discrimination, sexual harassment, or retaliation.

(b) Complaints filed by citizens alleging that employees in the village have subjected them to sexual harassment. If the complaints are made against employees of the Police Department, the Chief of Police shall conduct an internal affairs investigation pursuant to its standing operating procedures, and shall provide the results of any investigation to the Village Manager. The Village Manager shall review the investigation and may make an additional recommendation for further investigation and shall review the proposed resolution and either concur or propose an alternative resolution.

(c) Complaints that supervisors in the village have failed to report acts of sex discrimination, sexual harassment of employees or citizens or retaliation of which they were aware, or have failed to prevent that conduct from occurring.

*(B) Filing a complaint.*

(1) An employee need not file an EEO complaint with his or her own supervisor, nor he or she is required to go through the chain of command to file a complaint.

(2) An EEO complaint may be made either orally or in writing. If an oral complaint is made, the employee will be asked to put his or her complaint in writing. Written complaints are not required to be notarized.

(3) Individuals should utilize the procedures outlined in this subchapter. Management cannot address or respond to complaints about which it is unaware.

(4) In addition to making a complaint as explained in this subchapter, an individual who believes he or she has been subjected to sex discrimination, sexual harassment or retaliation, has the right to file a complaint with the United States Equal Employment Opportunity Commission (EEOC) or the New Mexico Human Rights Division (NMHRD).

*(C) Responding to an EEO complaint.*

(1) A department head or supervisor receiving an EEO complaint or otherwise becomes aware of an allegation of sex discrimination, sexual harassment or retaliation against an employee, will forward the EEO complaint or allegation to the Village Manager as soon as practicable.

(2) Failure of the department head or supervisor to comply with this requirement will result in appropriate disciplinary action being taken.

*(D) Investigating an EEO complaint.*

(1) All EEO complaints will be investigated by the Village Manager or designee promptly and in as confidential manner as possible. The Village Manager will determine the most appropriate manner to conduct the investigation.

(2) A department head or supervisor may make a preliminary inquiry where circumstances require that immediate action (e.g. separation of employees) is necessary until the time a full investigation can be initiated and completed.

(3) All village employees, including the accused, shall cooperate with the investigation of EEO complaints, including the giving of statements and participating in interviews. Any employee who fails or refuses to do so shall be subject to disciplinary action.

(4) Retaliation in any form against an individual who has exercised his or her right to make an EEO complaint or who cooperates with an investigation of a complaint or allegation is strictly prohibited. Any retaliation will itself be cause for disciplinary action.

*(E) Investigation report.*

(1) A written investigation report will be completed for each EEO complaint or allegation referred to the Village Manager.

(2) The report will be completed and submitted to the Village Manager within 12 working days of notification of the EEO complaint or allegation. Any extension to complete the report must be approved by the Village Manager.

(3) The report will be formatted in 5 sections. These sections are:

- (a) Introduction;
- (b) Discussion;
- (c) Findings and determinations;
- (d) Recommendation(s); and
- (e) Supporting documents.

(4) The report and its contents are considered confidential.  
(Ord. 210, passed 2-23-2006)

**§ 34.093 CORRECTIVE AND DISCIPLINARY MEASURES.**

*(A) General.*

(1) Upon completion of the investigation report of an EEO complaint, the report shall be submitted to the Village Manager.

(2) If the report recommends that the accused be subjected to disciplinary action, the department head shall notify, the accused of its intent to impose that disciplinary action.

(3) If the disciplinary action consists of a suspension without pay greater than 5 days, demotion, or dismissal, the accused will have the right to the formal grievance procedures as set forth in § 34.025.

**(B) Corrective action and discipline.**

(1) In considering the appropriateness of the recommended disciplinary action against the accused, the village will ensure that the discipline is:

(a) Fair and consistent;

(b) Designed to discourage others from committing acts of sex discrimination, sexual harassment or retaliation; and

(c) Designed to encourage others to come forward with valid complaints of sex discrimination, sexual harassment or retaliation.

(2) (a) The possible penalties applicable to violations of the village's zero tolerance policy regarding sex discrimination, sexual harassment and retaliation, include, but are not limited to a written warning or reprimand, suspension without pay, mandatory counseling and training, transfer, demotion, up to and including termination. Preventative or corrective action may be utilized even if an investigation is inconclusive if in the best judgment of management, action is necessary to prevent further complaints from occurring.

(b) If a violation is determined to have occurred, the following minimum penalties shall apply, but any penalty or combinations of penalties may be imposed, including termination, depending on the seriousness of the violation.

<i>Not Involving a Subordinate</i>	
First offense	A minimum written letter of reprimand up to termination, depending on the circumstances
Second offense	A minimum 3-day suspension without pay up to termination, depending on the circumstances
Third offense	Termination from employment

<i>Involving a Subordinate</i>	
First offense	A minimum 3-day suspension without pay up to termination, depending on the circumstances
Second offense	A minimum 10-day suspension without pay up to termination, depending on the circumstances
Third offense	Termination from employment

(Ord. 210, passed 2-23-2006)

***SUBSTANCE ABUSE AND TESTING  
OF VILLAGE EMPLOYEES***

**§ 34.105 SHORT TITLE.**

This subchapter shall be known as the Village of Milan Substance Abuse Subchapter.

(Ord. 210, passed 2-23-2006)

**§ 34.106 PURPOSE OF THE PROVISIONS.**

The village has a responsibility to all employees to provide a safe work place, and a responsibility to the public to ensure that the people's safety and trust in local government are protected. The village is dedicated to the prevention of situations where the use, possession or distribution of drugs or alcohol affects job performance or the safety of others. This policy is designed to fulfill our responsibilities to our citizens.

(Ord. 210, passed 2-23-2006)

**§ 34.107 DEFINITIONS.**

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

**ACCIDENT.** Any on-the-job injury which requires medical attention for the employee or any other person involved and/or causes an employee to



lose time from work; and/or any incidence involving a village motor vehicle or work place while in the performance of work duties, or operation of village equipment.

**ALCOHOL.** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

**APPLICANT.** An applicant for employment with the Village of Milan.

**BAT.** Breath alcohol technician.

**CDL.** Commercial drivers license.

**COMMERCIAL VEHICLE.** Any motor vehicle with a gross vehicle weight of 26,001 or more pounds.

**CONTROLLED SUBSTANCE and DRUGS.** Marijuana (THC), cocaine, opiates, phencyclidine (PCP) and amphetamines (including methamphetamine).

**D.O.T.** Department of Transportation.

**EAP.** Employee assistance program

**EMPLOYEE.** An employee of the Village of Milan.

**FTA.** Federal Transit Authority.

**INCIDENT.** Any on-the-job occurrence that is reportable to the village administrative department but does not require any medical treatment for the employee or any other person, and the employee does not incur any lost time from work.

**LICENSED MEDICAL LABORATORY.** A laboratory certified by the Department of Health and Human Services or the Department of Transportation.

**MEDICAL REVIEW OFFICER (MRO).** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the village's drug testing

program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and any other relevant biomedical information.

**POSITIVE TEST or POSITIVE RESULT.** A result of a substance test that indicates:

(1) A blood alcohol content of .04% by weight of alcohol (grams of alcohol per hundred cubic centimeters of blood);

(a) A blood alcohol content of .02 but less than .04% by weight of alcohol (grams of alcohol per hundred cubic centimeters of blood) is a positive result and in no event will an employee be allowed to perform safety sensitive functions with a positive result;

(b) However the employee will not be subject to mandatory termination of EAP options under § 34.091 for a positive result for alcohol at .02 but less than .04;

(2) Any measurable level of an illegal drug or metabolite of illegal drug, where the presence is not due to lawful sources; or

(3) A level of a legal substance which indicates abuse of that substance.

**RANDOM ALCOHOL OR SUBSTANCE ABUSE TESTING.** A system for selecting CDL required employees for alcohol or substance abuse testing in a statistically random system based on a neutral criterion such as employment or social security numbers without individualized suspicion that a particular federally mandated employee is using drugs.

**REASONABLE SUSPICION.** A belief based on objective facts sufficient to lead a prudent person to suspect that an employee is under the influence of a substance to the extent that job performance may be impaired or ability to perform the job safely may be reduced.

**REFUSAL TO SUBMIT (TO AN ALCOHOL OR CONTROLLED SUBSTANCES TEST).** A federally mandated employee:

- (1) Fails to provide adequate breath for testing without a valid medical explanation;
- (2) Fails to provide adequate urine for controlled substances testing without a valid medical explanation;
- (3) Employee engages in conduct that clearly obstructs the testing process; or
- (4) Refusal to submit has the same consequences as a positive result.

**SAFETY SENSITIVE PERSONNEL.** Includes, but is not limited to the Village of Milan employees from the following departments: Police; Fire; Street Vehicle Maintenance; WWTP; Transit Operator; and Solid Waste.

**SUBSTANCE ABUSE.** The use of alcohol, prescription or over-the-counter drugs, any of which impairs the ability of an employee to perform the job safely and effectively, or any use of illegal drugs or other controlled substances without a valid prescription.

**SUBSTANCE ABUSE PROFESSIONAL.** A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the national Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

**SUBSTANCE TEST, SUBSTANCE TESTING, TEST or TESTING.** An analysis of the breath or urine for alcohol, drugs, controlled substances or their metabolites to determine whether the person has ingested or otherwise used the substance in question within some time before the test.

**TEST SUBSTANCES.** The forms of testing required for alcohol and/or substance abuse as follows:

- (1) Evidential breath testing (EBT): alcohol;
- (2) Urine testing:
  - (a) Marijuana (THC Metabolite);
  - (b) Amphetamines;
  - (c) Cocaine;
  - (d) Opiates (including heroin); and
  - (e) Phencyclidine.

**TESTING AUTHORITY.** Refers to the Clerk-Treasurer, Police Chief or the administrative assistant.

**TRANSFER OR CHANGE IN JOB CLASSIFICATION.** From 1 department to another or from 1 position to another.  
(Ord. 210, passed 2-23-2006)

#### § 34.108 EXTENT OF PROVISIONS.

(A) (1) The following behavior by employees is prohibited:

- (a) Use of illegal drugs;
- (b) Abuse of legal drugs or alcohol;
- (c) Use of alcohol or illegal drugs on village time or property, including scheduled or unscheduled break periods, and at all other times when the employee is considered "at work" for the village;
- (d) Manufacture, sale, purchase, transfer, use or possession of illegal drugs or drugs obtained illegally;

(e) Arrival for work or being at work under the influence of drugs or alcohol, or with a blood alcohol content of .04% by weight or greater;

(f) Possession of alcohol on any premises of the village;

(g) Refusal to submit to an alcohol or controlled substance test; or

(h) Using alcohol within 8 hours following an on-duty accident or prior to a past accident test.

(2) An employee engaged in any of the prohibited conduct listed in division (A)(1)(a) through (h) of this section, shall be immediately removed from the job, but not necessarily terminated. In no event will the employee be allowed to perform safety sensitive functions including driving a commercial vehicle after a positive alcohol or drug test.

(B) An employee who is using prescription drugs or over-the-counter medications that could affect work performance should inform their supervisor (information received, shall be kept confidential). An employee who has a temporary ailment or permanent medical condition that may affect job performance should also notify his or her supervisor. Failure to notify the supervisor can lead to suspicion of substance abuse that might unnecessarily lead to substance testing. Upon notification the supervisor may:

(1) Assign the affected employee to less hazardous tasks, if possible; or

(2) Require the employee to take medical or other leave.

(C) Substance abuse is recognized as a medical problem. Since covered employees are eligible and participate in the village medical plan, employees should contact the village administrative office for a list of available assistance programs. The conduct

prohibited in this subchapter may present legal problems. Much of the listed conduct is illegal, and all of it may create a safety hazard and affect job performance. As a result, if the available assistance fails or is inappropriate given the nature of the conduct and the employee's position, the penalty for this conduct may be termination of employment. Any information received pursuant to this subchapter shall remain confidential.

(D) Drug and alcohol testing will be done only as provided in this policy. The results of the test, even if positive, will be kept confidential to the extent permitted by law.

(E) The Village EAP will be conducted through the village medical plan.  
(Ord. 210, passed 2-23-2006)

#### **§ 34.109 TESTING AUTHORITY.**

The Village Manager has responsibility for all village operations. By this policy, the Village Manager also delegates authority to the DER (designated employer representative) to assure substance testing under the following guidelines. Supervisors trained in "reasonable suspicion" may request alcohol and controlled substance testing for employees through the testing authority as outlined below.

(Ord. 210, passed 2-23-2006)

#### **§ 34.110 CONDITIONS/PROCEDURES FOR TESTING.**

Substance testing will be performed in all of the following instances:

(A) *Pre-employment testing.* Prior to employment of an employee, the applicant must submit to testing for controlled substances. The village shall not allow an employee to perform a safety-sensitive function unless the village has received a controlled substance test result from the MRO indicating a verified negative result. Offers of employment shall be withdrawn upon a positive test result.

**(B) Drug testing.**

(1) A supervisor will take the employee to the collection site. If the collection has not been performed within 32 hours after the incident, all attempts to do testing must cease.

(2) After the drug testing is completed, the supervisor will take the employee home. The employee cannot return to work until a negative result has been received from the MRO.

(3) Once the final drug test results are received from the MRO by the DER, they will notify the employee's division manager or supervisor.

**(C) Post-accident procedures for drug and alcohol testing.** The FTA/DOT/Village of Milan regulations require that any employee covered by this policy immediately submit to tests for controlled substances and alcohol if he or she is involved in an accident in a village vehicle. Under federal regulations an accident is defined as an occurrence associated with the operation of a vehicle in which:

(1) There is a fatality as a result of the accident;

(2) An individual involved in the accident/incident suffers injuries that require medical treatment away from the scene of the accident;

(3) The mass transit vehicle involved is a bus, electric bus, van or automobile in which 1 or more vehicle(s) incur(s) disabling damage as a result of the accident and must be transported from the scene of the accident by a tow truck or other vehicle; and/or

(4) Any other Village of Milan vehicle that has disabling damage and needs to be towed unless the employee's behavior can be completely discounted as a contributing factor to the accident. Full documentation on the accident/incident form must be made as to why the employee is discounted as a contributing factor and not tested.

**(D) Procedures.** Based on the applicable situations listed above the following procedures must be followed:

(1) The employee involved in the accident must immediately notify dispatch;

(2) A supervisor is dispatched to the scene of the accident;

(3) Dispatch notifies the DER of the impending test;

(4) The supervisor will begin to complete the accident/incident documentation form. This form must be used to document each accident/incident even if no testing takes place;

(5) A supervisor will take the employee to a drug and alcohol testing site;

(6) If the employee is being treated at the hospital, the supervisor will contact the DER and inform him or her of the situation. If the employee is able to give consent (see division (D)(13)) to be tested, the DER should remind the supervisor to request that the alcohol test be done first; if the breath alcohol test is not administered within 2 hours following the accident, documentation must be prepared and maintained on file stating the reasons the test was not promptly administered. If the employee has not been tested for alcohol within 8 hours following the accident all attempts to alcohol test must cease. If the test is performed and the breath alcohol content is 0.02 or greater on the initial test, the BAT must perform the confirmation test no less than 15 minutes and no more than 30 minutes after the initial test was performed. If the confirmation test is 0.02 or greater, the BAT must notify the DER immediately;

(7) The DER then notifies the employee's manager of the test results. If the urine collection has not been performed within 8 hours following the accident, the supervisor needs to prepare and maintain documentation as to why the test has not yet been performed. If the urine collection has not been performed within 32 hours after the accident, all attempts must cease;

(8) After the drug test is completed, the supervisor will take the employee home. The employee cannot return to their position until a negative result has been received from the MRO;

(9) Once the final drug test results are received by the DER, the DER will notify the employee's manager of those results;

(10) An employee involved in an accident that requires drug and alcohol testing must remain readily available for testing. If the employee does not do so, the employer can treat the behavior as a refusal to submit to testing. This does not mean that the employee cannot leave the scene of the accident to obtain emergency medical assistance or that medical attention will be delayed for an injured employee;

(11) In the event of a non-fatal accident the supervisor may determine that the employee involved was not a contributing factor in the accident/incident event. The supervisor will discuss the situation with the DER and may decide not to test the employee; and

(12) In rare circumstances where law enforcement personnel have tested the employee for drugs and alcohol, the company may accept those results if law enforcement personnel will release the information.

(13) If the covered employee is unable to give consent to be tested due to being injured and unconscious or dead, DO NOT proceed with testing by catheterization or any other means. The federal rules also prohibit catheterization of a conscious employee. If you are unable to get employee consent within the time frames allowed for testing, you must document the reason for not testing on the accident/incident documentation form.

*(E) Random procedures for drug and alcohol testing.*

(1) Any employee designated as safety-sensitive under the FTA/DOT/Village of Milan Policy is subject to selection for drug testing at any time on a random basis. Random alcohol

testing must take place just prior, during or immediately following the performance of a safety sensitive duty. The following is a procedural guide to help supervisors when an employee is selected for random testing.

(a) The DER will call the supervisor the same day that the employee must undergo a random test. The supervisor will be told if it is a random drug, alcohol, or drug and alcohol test, the location of the collection site to send the employee and the time they are to report for the test.

(b) Right before the time that the employee is to be tested, the supervisor will notify the employee they have been randomly selected for a test. The employee will be given directions to the collection site and instructed to report there immediately. The employee will be given a form to take to the collections site indicating the type of test and what tests are needed. They may also be given the appropriate drug testing supplies if they are not stocked at the collection site.

(c) The supervisor will note the date and time the employee was given the instructions to report for random testing and report that information to the DER. The supervisor should also remind the employee that he or she has 30 minutes to report to the collection site.

(d) If the employee chosen for random testing is unavailable to be tested due to vacation, sick leave, and the like, the supervisor will wait for the return of the employee to conduct the test. If the employee will not be returning to work during the testing period, the supervisor will notify the DER so that another employee can be chosen for random testing.

(e) If the employee refuses to go for the random test when directed or does not show up at the collection site in the allotted time, the DER should be notified and it will be considered a refusal to test with the same consequences as a positive test.

*(F) Return to duty testing procedures.*

(1) After an employee receives a positive drug/alcohol result or after an employee refuses to take part in the testing program, the employee must be referred to a substance abuse professional (SAP).

(2) The employee may not return to their duties until they have satisfied the SAP's recommendations for treatment or education and has had a negative test result.

(a) The DER must receive a written report from the SAP indicating that it is their professional opinion that the employee in question has completed or has shown compliance with the recommendations and may return to duty. The specific content of the SAP report is detailed in C.F.R. pt. 40.311.

(b) The DER will send employee to the collection site with a notice to report form indicating a return to duty test.

(c) The SAP will inform the DER if the employee needs a drug and/or alcohol test done prior to returning to duty.

(d) The DER must receive the negative test results prior to reinstating the employee to a position.

(e) All results and the SAP's correspondence should be kept in secured, confidential manner.

*(G) Follow-up testing procedures.* Follow-up testing is done after an employee is brought back to work after an initial positive drug/alcohol result or refusal to test, completing the SAP's recommendations and having a negative result on the return to duty test.

(1) DER must adhere to the SAP's recommendation of duration and frequency of the follow-up testing.

(2) The DER will actually schedule the time and date of the employee's testing keeping in mind the SAP's recommendation.

(3) There must be a minimum of 6 tests in the first 12 months and testing may go on as long as 5 years. This will be determined by the SAP's evaluation.

(4) The DER can contact the SAP regarding the progress of the employee if needed.

(5) If the employee is selected for a random test, the random test will be done in addition to the follow-up testing.

(6) Follow-up testing results (and employer's copy of the CCF) will be filed with the original positive result, return to duty test result and all SAP documentation, evaluations and reports in a confidential and secured manner.

*(H) Procedures for receiving results.*

(1) *Drug results sent.* Drug results will be sent to the DER'S office on the secured fax (email or by confidential mail). If the result is positive, the MRO will call before sending the result and inform the DER of the positive result. The DER contacts the supervisor of the employee testing positive to have the employee immediately removed from safety-sensitive duties.

(2) *Employer copy and CCF.* The employer copy of the custody and control form (CCF) should be sent directly to the DER from the collection site within 1 day of the collection.

(3) *Breath alcohol testing results.* Breath alcohol testing results will be faxed or mailed in an envelope to the attention of the DER marked "confidential." Positive alcohol test results must be reported immediately by phone when the test is performed. The employer's copy of the breath alcohol testing form will be faxed or sent via United States mail by the collection site.

(4) *Verification of identifying information.* After receiving drug and alcohol results, the DER verifies the identifying information on the test result.

(5) *Match results with blue copy.* Match the drug test results with blue copy of the Village of Milan CCF form.

(6) *Filing.* File the CCF, breath alcohol testing form and drug testing results in a secured file according to date tested until all copies of the records are received.

(7) *Pre-employment results.* Match the social security number on all paperwork. Enter results in the system. File the results, employer copy of the CCF and other signed forms in a secured location.

(8) *Random and follow-up test results.* Enter result in system. Keep the random list generated each period and document the reason why any person was selected but not tested.

(9) *Post-accident test results.* Enter result in system. File with post accident/incident form in secure location.

(10) *Reasonable suspicion test results.* Match the social security number and enter results in the system. Inform supervisor to return the employee to duty if the result is negative. If the result is positive follow appropriate procedures for positive test results. Enter result in system. File with the reasonable suspicion documentation form in secure location.

(11) *Return to duty test results.* Once recommended by the SAP, schedule breath alcohol test and/or drug tests before employee is scheduled to return to duty. Contact supervisor of department where employee will be returning once the negative test result(s) are received. Enter result in system. File negative results along with the SAP's report and return to duty recommendation.

(12) *Follow-up test results.* The recommendation for the duration and frequency of the testing is the responsibility of the SAP. Scheduling is the DER's responsibility. Tests are done in addition to any random tests that may be required. Results are to be kept with the original positive test result (or refusal documentation), SAP reports and recommendations.

(13) *SAP referral forms.*

(a) Any employee who receives a positive result or refuses to be tested must be referred to a SAP.

(b) The DER will fill out the SAP referral form and ask the employee to sign the form.

(c) A copy of the signed form should be kept attached to the positive test result or refusal documentation.

(Ord. 210, passed 2-23-2006)

#### § 34.111 CONFIDENTIALITY.

All results and paperwork pertaining to drug and alcohol tests are secured in locked file cabinet in the DER's office.

(Ord. 210, passed 2-23-2006)





**TITLE V: PUBLIC WORKS**

Chapter

- 50. GARBAGE**
- 51. WATER AND SEWER UTILITIES**
- 52. WATER CONSERVATION**
- 53. WATER PRETREATMENT**



## CHAPTER 50: GARBAGE

### Section

#### *General Provisions*

50.001 Definitions

#### *Garbage and Rubbish Collection*

- 50.015 Duty of village
- 50.016 Route; time of collection; duty of property owner to place receptacles out for collection

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#### **GENERAL PROVISIONS**

#### **§ 50.001 DEFINITIONS.**

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

#### ***BUSINESS OR COMMERCIAL PREMISES.***

Includes any and all businesses or operations which carry on a commercial activity encompassing all business and industrial enterprises including but not limited to enterprises engaged in the buying and selling of goods or services.

***GARBAGE.*** Includes any and all rejected or waste food, offal, swill, carrion, ashes, dirt, slops, waste paper, metal, glass, cut grass, trimmings, trash, rubbish and waste or unwholesome materials of every kind and character. Further for the purpose of this chapter, garbage shall be divided into 2 classes, as follows:

(1) ***CLASS 1 GARBAGE.*** Includes kitchen and table refuse and leavings, any and all rejected or waste food, offal, swill, carrion, slops and also every accumulation of animal and vegetable and other matter that attends the preparation, consumption, decay or dealing in or storage of meats, fish, fowl, birds, fruits, and vegetables; glass containers bottles, crockery less than 1 gallon; tin cans, and metal vessels less than 1 gallon in size; dry trimmings from lawns, trees and flower gardens, pasteboard boxes, rags, paper, straw, sawdust, packing materials, shavings, boxes, ashes, weeds and all rubbish or other refuse so long as the materials can be easily contained in containers provided for in this chapter.

(2) **CLASS 2 GARBAGE.** Includes and be held to mean any of the items or containers listed in class 1 garbage which are more than 1 gallon in size or are of the size and shape that they cannot be easily containerized in the garbage containers provided for by this chapter. In addition, **CLASS 2 GARBAGE** shall include whole or broken brick or cinder block; glass used for buildings or automobiles; metal materials including engine and automobile parts and tires which would make a container difficult to empty; all liquid materials including flammable liquids and oils; and ashes which have not been completely extinguished.

**RESIDENCES.** Includes all premises on which persons reside for more than a temporary period, and therefore, excluding premises operating for the housing of transient persons.  
(Ord. 102, passed 10-21-1980)

### **GARBAGE AND RUBBISH COLLECTION**

#### **§ 50.015 DUTY OF VILLAGE.**

The village shall provide sufficient employees and equipment for the collection and disposal of all garbage and rubbish. The garbage and rubbish shall be collected as frequently as may be necessary in accordance with good sanitary practices.  
(Ord. 102, passed 10-21-1980)

#### **§ 50.016 ROUTE; TIME OF COLLECTION; DUTY OF PROPERTY OWNER TO PLACE RECEPTACLES OUT FOR COLLECTION.**

The Village Board of Trustees shall designate, by resolution duly adopted, the garbage collection routes and times of collection, which resolution shall become effective 5 days after its publication in the official newspaper in the village, and after the designation of the routes and times, it shall be the duty of every person owning or controlling any house, residence, shop, establishment, hotel, restaurant, market, apartment house, tourist camp, trailer camp or other place of business or habitation within the village, to

place a garbage and rubbish receptacle at the alley accessible to the property, the garbage and rubbish receptacle shall be kept at the closest point to the designated collection route on the premises during the hours of collection.

(Ord. 102, passed 10-21-1980) Penalty, see § 50.999

### **GARBAGE AND TRASH RECEPTACLES**

#### **§ 50.030 REQUIRED; LOCATION.**

It shall be the duty of every person owning a residence or carrying on a business or commercial activity within the village, to provide and maintain 1 or more garbage or rubbish receptacles, of the kind and character described in § 50.032 of this chapter, to be kept at the rear of the property abutting the alley, and in cases where the property does not abut on or have access to any alley, the garbage and rubbish receptacle shall be kept at the nearest street line designated as the garbage and rubbish collection route during the hours of collection.  
(Ord. 102, passed 10-21-1980)

#### **§ 50.031 REGULATIONS FOR DEPOSITING GARBAGE AND RUBBISH IN RECEPTACLES.**

All garbage and rubbish coming from any premises in the village shall be deposited in receptacles as follows:

(A) No wastes or rubbish defined in this chapter as class 2 garbage shall be deposited in the garbage or rubbish receptacles.

(B) No liquid wastes such as liquid from wet garbage, slops and swills shall be stored in garbage containers but shall be disposed of through the sewerage system, except where licensed collectors are permitted to dispose of this class of refuse.

(C) Wet garbage and small rubbish shall be drained of surplus water and securely wrapped in paper before being deposited in refuse containers.

(D) (1) All refuse or rubbish defined as class 2 garbage shall be handled by extra or special service.

(2) Any person having class 2 garbage shall make arrangements with the Village Clerk's office for its immediate pickup.

(3) All large class 2 garbage or rubbish shall be tied in bundles not over 4 feet in length and 50 pounds in weight and shall be stored near the refuse containers, convenient for the collection crews.

(E) All rubbish which accumulates from commercial establishments such as boxes, cartons and crates, shall be collapsed before storing in rubbish containers.

(Ord. 102, passed 10-21-1980)

#### **§ 50.032 SPECIFICATIONS.**

(A) It shall be the duty of every person owning or controlling any house, residence, business establishment, hotel, restaurant, market, apartment house, tourist court, trailer camp or any other place of business or habitation within the village, to provide and maintain on the alley abutting the property, or where the property does not abut or have access to any alley, at the nearest street line abutting the designated collection route on the property during the hours of collection, 1 or more flyproof containers.

(B) (1) Except for commercial establishments who have received the village's approval for other types of containers, containers shall be of not less than 20 gallons or more than 30-gallons' capacity, with tight lids, constructed of galvanized iron or commercially acceptable hard plastic or other material approved by the village.

(2) The containers shall be cylindrical in shape, watertight, rodentproof and fitted with side handles, in which shall be deposited all garbage and rubbish coming from the premises.

(3) Covers must be in place at all times except when refuse is being deposited in or removed from the containers.

(Ord. 102, passed 10-21-1980)

#### **COLLECTION AND DUMP FEES**

##### **§ 50.045 FEES.**

Garbage and rubbish collection, services, fees, and charges payable to the village are established as set forth by the Village Manager.

(Ord. 102, passed 10-21-1980; Am. Ord. 112, passed 1-18-1983; Am. Ord. 167, passed 7-20-1983; Am. Ord. 175, passed 10-1-1997; Am. Ord. 201, passed 8-21-2003; Am. Ord. 214, passed - -) Penalty, see § 50.999

#### **REGULATIONS**

##### **§ 50.060 BURNING TRASH, CUT GRASS, WET GARBAGE AND THE LIKE PROHIBITED IN FIRE LIMITS.**

It shall be unlawful for any person to burn any trash, cut grass, leaves, garbage, refuse or other waste materials of any kind and character within the fire limits of the village or the fire zone as it may be hereafter enlarged, altered or otherwise changed from time to time by the Village Board of Trustees.

(Ord. 102, passed 10-21-1980) Penalty, see § 50.999

##### **§ 50.061 REGULATIONS APPLICABLE OUTSIDE FIRE LIMITS.**

It shall be unlawful for any person to burn any trash, cut grass, leaves, garbage, refuse or other waste materials of any kind or character outside the fire limits and within the limits of the village, except that the burning may be done, if each and every one of the following conditions are met:

(A) Burning be done between the hours of 8:00 a.m. to 12:00 p.m. noon any day except Sunday;

(B) Burning be done in a steel, masonry or other fireproof container over which a wire-mesh lid shall be firmly affixed to prevent the escape of burning embers;

(C) The container shall not be nearer than 50 feet to any building, shed, outhouse or other inflammable structure;

(D) Burning be done only on private premises owned or controlled by the individual doing or supervising the burning or by permission of the owner of the premises; and

(E) Burning be done with direct personal supervision of the owner or controller of the premises or his or her agent.  
(Ord. 102, passed 10-21-1980) Penalty, see § 50.999

limits of the village; provided that this section shall not apply to any person hauling clean sawdust, or rotted manure for fertilizer, if the same be hauled in a sanitary and inoffensive manner.  
(Ord. 102, passed 10-21-1980) Penalty, see § 50.999

#### **§ 50.999 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.

### ***UNLAWFUL DISPOSAL AND HAULING***

#### **§ 50.075 UNLAWFUL DISPOSAL; ACCUMULATION; BURNING.**

It shall be unlawful for the owner or occupant of premises subject to the terms of this chapter to:

(A) Dispose of garbage except as provided herein;

(B) Permit accumulation of garbage upon the premises, except for periods of the time between pickups; or

(C) Burn inflammable rubbish, except where the burning is in strict compliance with the terms and provisions of an ordinance of the Village of Milan, New Mexico for the controlled burning of rubbish within the Village of Milan.  
(Ord. 102, passed 10-21-1980) Penalty, see § 50.999

#### **§ 50.076 UNLAWFUL HAULING OF GARBAGE.**

It shall be unlawful for any person, firm or corporation other than the village and its employees to remove or convey, or to cause or permit to be removed or conveyed upon or along the village, any garbage, whether the same is created or accumulated within the corporate limits or outside of the corporate

**CHAPTER 51: WATER AND SEWER UTILITIES**

Section

*General Provisions*

- 51.01 Requirements and authorization
- 51.02 Budgetary compliance
- 51.03 Deposits
- 51.04 Lien
- 51.05 Administration

*Water and Sewers*

- 51.20 Meters and billings
- 51.21 Classification of use
- 51.22 Rates for metered water
- 51.23 Rate adjustment, periodic review, summer rates
- 51.24 Discontinuance of service
- 51.25 Fire connections and hydrants
- 51.26 Installation of new water and sewer main extension, distribution and collection lines
- 51.27 Installation of new water service lines and meters
- 51.28 Installation of new sewer service line and connection
- 51.29 New service charges
- 51.30 Sewer rates
- 51.99 Penalty

**GENERAL PROVISIONS**

**§ 51.01 REQUIREMENTS AND AUTHORIZATION.**

The Board of Trustees of the Village of Milan find:

(A) The village is an incorporated municipality under the laws of the State of New Mexico and is authorized to own, operate and maintain water and sewer systems and services within and outside the village limits;

(B) The village is authorized to fix, impose, collect and require payment according to charges, fees, rates and penalties sufficient to provide for the operation, maintenance, renewal, replacement, and safety of the systems and services which allow for compliance with state, federal and local laws, regulations and ordinances;

(C) Public Laws 92-500 and 91-500, being 33 U.S.C. §§ 1251 *et seq.*, require a User Charge System and an Industrial Waste Treatment Cost recovery system, and compliance with the Joint Powers Agreement with the City of Grants provides in part therefore; and

(D) The village revenue bond ordinances require rates sufficient to produce specific revenues, including the provision for fund reserves for the renewal and replacement of systems and services, at a rate calculated at 120% coverage.  
(Ord. 178, passed 6-16-1998)

**§ 51.02 BUDGETARY COMPLIANCE.**

(A) *Generally.* The Joint Utilities Department of the village shall conform to requirements of the Department of Finance and Administration of the State of New Mexico including, but not limited to, the budget process and the procurement code; shall maintain its collections in a current manner, pay its accounts promptly, and provide for the timely transfer of funds necessary to meet interest and reserve requirements; maintain the systems and their meter readings and meter repair systems according to modern and approved practices; and otherwise provide for its obligations to and from other departments of the village, under joint powers agreements and as otherwise authorized.

(B) *Costs.* An annual interfund transfer shall be made from the Joint Utilities to the general fund in an amount equal to the cost of the village provided administrative service necessary for the operation and maintenance of the water and sewer systems. The cost of the services shall be calculated in accordance with generally accepted accounting standards.

(C) *Services.* An annual interfund transfer shall be made to the Joint Utilities Fund for services provided to other departments of the village not otherwise provided for. The cost of these services shall be calculated in accordance with generally accepted accounting standards.  
(Ord. 178, passed 6-16-1998)

**§ 51.03 DEPOSITS.**

(A) Each applicant for a water account shall pay a service and security deposit to guarantee payment of all charges billed in accordance with this chapter. In consideration of the period of time from the beginning of service until billing, the initial due date and until collection enforcement procedures may be effected, the amount of the deposit for residential classifications shall be determined based upon a 2-month total billing average except for rental properties or other properties which have a documented unsatisfactory payment history. The properties with a documented

unsatisfactory payment history may be subject to an increased deposit requirement unless the property owner shall otherwise specifically guarantee the account in a manner satisfactory to the village.

(B) All other classifications shall be subject to similar deposit requirements unless the Utility Department recommends additional adjustments be made under warranted circumstances. The placing of a deposit shall not affect any other security provided that the utility system, by law and this chapter.

(C) The deposit may be applied against any delinquent or unpaid billings of the user. In the event service has been terminated for non-payment and application is made for restoration of service, a new deposit shall be required and the amount of the deposit may be increased by an amount up to 1-1/2 times the prior or regular deposit amount.  
(Ord. 178, passed 6-16-1998)

**§ 51.04 LIEN.**

The charges, fees, billings and penalties prescribed by this chapter or any ordinance of the village creating a municipal lien, shall constitute a municipal lien in accordance with NMSA § 3-36-1, 1978, and the Municipal Clerk shall file a notice of lien in the office of the County Clerk upon the property served for any and all amounts due and unpaid and which have remained delinquent for a period of 60 days.  
(Ord. 178, passed 6-16-1998)

**§ 51.05 ADMINISTRATION.**

The chief administrative officer may issue rules and regulations for the administration of this chapter which shall become effective within 30 days of issuance and which will be posted in the utility service office and issued to the Mayor and members of the Village Board of Trustees. The Board may recommend revisions/corrections or may rescind any rules and regulations by appropriate action at a meeting of the Board.  
(Ord. 178, passed 6-16-1998)



which shall become effective within 30 days of issuance and which will be posted in the utility service office and issued to the Mayor and members of the Village Board of Trustees. The Board may recommend revisions/corrections or may rescind any rules and regulations by appropriate action at a meeting of the Board.

(Ord. 231, passed 12-17-2010)

## **WATER AND SEWERS**

### **§ 51.20 METERS AND BILLINGS.**

(A) *Meters.* Each family unit, commercial unit, trailer/mobile home unit, industrial unit, separate building or other separate user shall be individually metered except as provided otherwise herein and separately rated, or where it is physically unreasonable or otherwise not feasible, as determined by the chief administrative officer of the village.

(B) *Reading meters.* Each meter shall be read and the reading recorded monthly on the same date or as near to the same date as possible. A reading may be estimated where an apparent discrepancy or operative failure occurs or physical obstacles are encountered. The cause for any estimated reading shall be reported and recorded and an order for corrective action shall be immediately processed.

(C) *Protection of meters.* The property owner and user shall cooperate to protect the meter from damage and maintain its location free from obstruction. They shall not otherwise tamper with the meter, make additional connections to the meter or, in any manner, alter, change or remove the meter or interfere with its function. They shall not attempt to receive water from the system except through the meter.

(D) *Billing.* Bills shall be prepared upon completion of the reading cycle and dated as of the date of the actual reading. Bills shall be payable upon

receipt and become delinquent immediately following the due date noted on the bill which shall be set at not less than 20 days following the date of the reading.

(E) *Billing errors.* While the village strives to avoid any billing errors, they may occur. However, it is the customer's responsibility to immediately review his or her utility bill upon its receipt to ensure that the bill is correct. Effective as of the date of this amendment, the village will not adjust or provide a credit or refund for any utility billing error, no matter what the cause, for any utility bill mailed out to a customer more than 6 months prior to the requested adjustment. Any request for such an adjustment due to a billing error must be submitted by the customer in writing to the village utility billing clerk within said 6 months. Forms for such requests are available from the village utility billing clerk upon request.

(Ord. 231, passed 12-17-2010; Am. Ord. 242, passed 2-21-2013)

### **§ 51.21 CLASSIFICATION OF USE.**

(A) *Residential, single-family.* A user in a single dwelling unit for domestic purposes only. Includes single-family residences, individual trailer/mobile homes, and each separately metered unit of duplexes, triplexes and other multi-unit family structures.

(B) *Residential, multi-unit, multi-family.* Includes structures comprised of 2 to 6, inclusive, individual family units served by a common meter and system.

(C) *Commercial I.* Community commercial users including offices, retail stores, hotels, motels, trailer courts and apartment structures with more than 6 units, none of which use processed water in the normal conduct of business.

(D) *Commercial II.* Commercial laundries, laundromats, car/truck washes and other commercial water/sewer intensive operations directly serving the general public.

(E) *Industrial*. Uses which may require large quantities of water, special provisions for service, contribute industrial wastes other than normal domestic wastewater to the sewer and wastewater treatment systems, or as applicable under Public Law 91-500 and generally pertaining to industrial activities, manufacturing, processing, or otherwise are determined to be of a specific character.

(F) *Special classifications*. Users or facilities that have characteristics not common to other water and sewer customers and which may be part of general local government service programs including, but not limited to:

- (1) Parks and recreation facilities;
- (2) Facilities subject to joint powers agreements;
- (3) Beautification projects: and
- (4) Fire protection outlets, sprinkler systems and hydrants.

(G) *Outside village limits*. Properties and usage of services not located within the village limits which may be classified in accordance with the 6 classifications within this section but which shall be separately metered.  
(Ord. 231, passed 12-17-2010)

#### § 51.22 RATES FOR METERED WATER.

(A) *Inside village limits*. The monthly rates for water, including fixed charges and commodity charges shall be as follows:

[Table begins on following page]

**Water and Sewer Utilities**

<b>Residential, single-family: fixed charge, minimum - \$13.94 per user-unit, plus an additional commodity charge of:</b>	
\$1.97 per thousand gallons	from 2,000 to 5,000 gallons
\$2.07 per thousand gallons	from 5,000 plus to 20,000 gallons
\$2.13 per thousand gallons	from 20,000 plus to 40,000 gallons
\$2.19 per thousand gallons	from 40,000 plus to 100,000 gallons
	100,000 plus gallons *(See note below)
<b>Residential, multi-unit, multi-family: fixed charge, minimum - \$18.75 plu an additional commodity charge of:</b>	
\$1.97 per thousand gallons	from 0 to 5,000 gallons
\$2.07 per thousand gallons	from 5,000 plus to 20,000 gallons
\$2.13 per thousand gallons	from 20,000 plus to 40,000 gallons
\$2.19 per thousand gallons	from 40,000 plus to 100,000 gallons
	100,000 plus gallons* (See note below)
<b>Non-residential, non-commercial: same as residential, single-family</b>	
<b>Commercial I Water: fixed charge, minimum</b>	
<b>Service line size</b>	
3/4 inch	\$23.44
1 inch	\$31.25
1-1/4 inches	\$46.88
1-1/2 inches	\$65.75
2 inches	\$93.75
3 inches	\$312.50
4 inches	\$468.75
6 inches	\$625.00
<b>Plus an additional commodity charge of:</b>	
\$2.07 per thousand gallons	from 0 to 5,000 gallons
\$2.13 per thousand gallons	from 5,000 plus to 20,000 gallons
\$2.19 per thousand gallons	from 20,000 plus to 50,000 gallons
\$2.32 per thousand gallons	from 50,000 plus to 100,000 gallons
	100,000 plus gallons* (See note below)
<b>Commercial II Water: The rates shall be the same as those for Commercial I Water.</b>	
* NOTE: Consumption or use above 100,000 gallons in any month shall be subject to review and establishment of special rates by the Chief Administrative Officer of the village following analysis of the requirements for service.	

## Milan - Public Works

(B) *Outside village limits.* The monthly rates for water including fixed charges and commodity charges shall be as follows:

<b>Residential, single-family: fixed charge, minimum - \$25.79 per user-unit, plus an additional commodity charge of:</b>	
\$1.97 per thousand gallons	from 2,000 plus to 5,000 gallons
\$2.07 per thousand gallons	from 5,000 plus to 12,000 gallons
\$2.13 per thousand gallons	12,000 plus gallons* (See note below)
<b>Residential, multi-unit, multi-family: fixed charge, minimum - \$28.13 plus an additional commodity charge of:</b>	
\$1.97 per thousand gallons	from 0 plus to 5,000 gallons
\$2.07 per thousand gallons	5,000 plus to 12,000 gallons
\$2.13 per thousand gallons	12,000 plus gallons* (See note below)
<b>Non-residential, non-commercial: Same as residential, single-family</b>	
<b>Commercial I and II Water: fixed charge, minimum</b>	
<b>Service line size</b>	
3/4 inch	\$31.25
1 inch	\$39.07
1-1/4 inches	\$54.69
1-1/2 inches	\$78.13
2 inches	\$117.19
3 inches	\$390.63
4 inches	\$585.94
6 inches	\$859.38
<b>Plus an additional commodity charge of:</b>	
\$2.07 per thousand gallons	from 0 to 5,000 gallons
\$2.13 per thousand gallons	5,000 plus to 35,000 gallons
\$2.19 per thousand gallons	35,000 plus to 60,000 gallons
\$2.25 per thousand gallons	60,000 plus gallons* (See note below)
*NOTE: Consumption or use above 100,000 gallons in any month shall be subject to review and establishment of special rates by the Chief Administrative Officer of the village following analysis of the requirements for service.	

(C) *All other system use.*

(1) *Industrial.* Rates shall be established by the Chief Administrative Officer of the village following analysis of the requirements for service provided that the fixed charge, minimum, shall not be set at less than 150% of the fixed charge, minimum, for Commercial II users should the analysis reveal an industrial character for the said use, and, provided further that pending such determination or in the event of failure to reveal such character for use, the Commercial II rates shall be applied. Any such determination may be subject to appeal to the Village Board of Trustees.

(2) *Special.* Rates shall be established by the Chief Administrative Officer of the village to meet the requirements of the special programs or facilities, and contracts or agreements as they may be negotiated and as they may promote for the public safety, health, welfare and betterment of the quality of life for the citizens of the village.  
(Ord. 231, passed 12-17-2010)

**§ 51.23 RATE ADJUSTMENTS; PERIODIC REVIEW; SUMMER RATES.**

(A) It is declared to be the policy of the Board of Trustees of the village that it may authorize some reduction of water rates during the summer months (May, June, July and August) for all residential users of water within the village limits and to make a fair and equitable adjustment on a year-to-year basis of such summer rates. Similarly, the Board of Trustees recognizes its obligations to maintain a rate structure for the entire system which is sufficient to produce revenues in a current manner to assure a fiscally sound operating utility system. The Board of Trustees hereby empowers, authorizes and directs the Chief Administrative Officer to, on an annual basis:

(1) Review the records and accounts of the utility system at the close of the fiscal year and, within a reasonable time thereafter, make a determination of the adequacy of the rates established by this chapter;

(2) To the extent necessary, set increased or decreased regular rates, either by percentage or revision; and

(3) Set the rates for the following summer, including the period such rates are to be effective.

(B) The summer rates shall not extend for a period of more than 4 months.

(C) The Chief Administrative Officer shall furnish the proposed revisions and summer schedules to Mayor and Board of Trustees on or before November 1 of each year unless no changes are proposed, in which event the current rates continue in full force and effect.

(D) The Board of Trustees may reject or amend the proposal within 30 days and the rates thus established shall become effective and included in the first billing of the month of January immediately following the Board's action.  
(Ord. 231, passed 12-17-2010; Am. Ord. 243, passed 6-20-2013)

**§ 51.24 DISCONTINUANCE OF SERVICE.**

(A) The village may cause the water supply to be turned off at the meter and discontinue service to a property for failure to pay charges, fees or penalties for services (sanitary sewer, water, solid waste collection and landfill disposal, main line fees, service connections, or as otherwise required by ordinance) which have been billed and remain delinquent and unpaid for a period of 10 days, and in the event service is so discontinued, all charges which have been billed by the date of the disconnection of service shall become due and payable in addition to any penalties, service restoration or collection charges.

(B) In order to discontinue service, a written notice shall be sent to the customer or property owner giving him or her at least 10 days' notice of termination of service, the reason for termination, the

date service will be terminated and the action necessary by the customer to avoid disconnection of service.

(C) Extraordinary, unforeseen hardship or special circumstances which may temporarily affect compliance with payment requirements must be reported prior to the termination date to the utility collection official for consideration, and any arrangements which may be reasonably made to mitigate the delinquency are authorized. However failure to meet the terms of any such agreement will render it null and void, and the service will be immediately subject to discontinuance without further notice.

(D) The village may also cause the water supply to be turned off at the meter or may disconnect and remove the meter and terminate service to the property for any of the following reasons or activities by or on behalf of the consumer or property owner:

- (1) Tampering with the utility's meter or equipment so as to prevent it from properly registering the actual amount of water consumed;
- (2) Unauthorized or fraudulent use of service, failure to establish or re-establish credit or use of service in the promotion of illegal activities;
- (3) Failure to allow the utility reasonable access to its meters, equipment, manholes or lines (all utilities);
- (4) Use of service or operation of equipment so as to interfere with the quality, safety or continuity of service furnished by the utility to others;
- (5) Willful waste of water, including failure to correct defects in the service line, internal piping or appliances; and
- (6) Non-compliance with any provision of this chapter.

(E) After an account is given written notice that service will be disconnected, the following service charges are applicable;

One collection trip	\$9.50
One turn-off and one turn-on	\$20.00
Pull and replace meter	\$37.50

(F) Whenever, pursuant to this chapter, the village has caused the meter to be removed and service terminated, and provisions are not made for the restoration of service under the terms and conditions of the Village Utility Department and this chapter, including but not limited to payment in full of all amounts due, for a period of 60 days from such removal, the service to the property shall be deemed to have been abandoned and restoration of the meter and service connection may be considered to be a new service and subject to the charges and fees specified in this chapter for new service installation or, if less, payment in full of such amounts due in addition to the meter replacement charge above.

(G) The village may also proceed to file its lien upon the property in accordance with the law for such unpaid amounts due.

(H) Whenever a customer owing the village for past water service at any location makes application for water service, it will be necessary for that customer to pay any unpaid balances or make advanced arrangements for payment with the village before water service will be restored or connected.

(I) Evidence of damage to the meter, any alteration of the connection or meter installation, or any connection or reconnection with or without an unauthorized meter shall, upon discovery by the village, be presumptive evidence that the user has violated the provisions of this chapter.

(Ord. 231, passed 12-17-2010)

**§ 51.25 FIRE CONNECTIONS AND HYDRANTS.**

*(A) Fire connection—non-metered service.*

(1) For service connections to the utility for private fire protection (applicable to all non-metered services through which water is to be made available solely for extinguishing accidental fires):

<i>Service Size</i>	<i>Fixed Monthly Charge In-Village</i>	<i>Fixed Monthly Charge Out-of-Village</i>
2 inches	\$5.00	\$10.00
4 inches	\$20.00	\$40.00
6 inches	\$45.00	\$90.00
8 inches	\$80.00	\$160.00

(2) For all non-metered service lines not listed, the charge shall be the square of the line size in dollars for in-village service. Out-of-village charges per month for fire protection shall be two times the amount of in-village charges.

(3) Non-metered service for any purpose other than standby fire protection shall be a violation of this chapter and subject to the penalties specified herein except by written agreement and approved by the Chief Administrative Officer of the Village.

*(B) Private use of fire hydrants.*

(1) Connection to fire hydrants or withdrawal of water there from, at any location, are prohibited

(2) Temporary connection to a fire hydrant, for construction purposes or other bulk use, may be permitted upon application to the Utility Department at the Village Hall, and a special meter shall be temporarily installed by the Utility Superintendent for such temporary service.

(3) All other occasional or bulk deliveries of water shall be furnished at specially designated locations and for which permit and payment shall be made upon application to the Utility Department at the Village Hall.

(4) Rates for occasional, construction, bulk and other water use shall be set by the Chief Administrative Officer of the village.

(5) Connections to fire hydrants in violation of this chapter will be subject to the penalties specified herein.  
(Ord. 231, passed 12-17-2010) Penalty, see § 51.99

**§ 51.26 INSTALLATION OF NEW WATER AND SEWER MAIN EXTENSION, DISTRIBUTION AND COLLECTION LINES.**

*(A) Water/sewer distribution and collection lines.* Where no main distribution and collection lines have been installed and service will be required, the area to be served may be provided service as follows:

(1) A developer, subdivider, builder, owner or group of individuals, hereinafter the petitioner, desiring such service shall, after being found to be proceeding in accordance with the subdivision policies, rules and regulations of the village, submit plans and specifications for such installation within the area proposed for said service to the Chief Administrative Officer of the village for approval;

(2) The petitioner will be required to provide the main lines within such area at his or her sole expense. He or she may construct such facilities by the use of qualified contractors subject to inspection and acceptance of the Chief Administrative Officer of the village; and

(3) Requirements of the master plan for said development for sizes of pipe in excess of 10 inches diameter or other extraordinary facilities may be negotiated when benefits exceed that of the area petitioned hereunder, subject to the ability of the village to participate.

(B) *Water/sewer main extension lines.* Where an area requiring service, within the village boundaries, exists at a location other than adjacent to or abutting the existing system of the village; where connections may be readily made in accordance with this section; and where lines must be extended along, by over or through properties of other owners, these extensions shall be made at the expense of the petitioner except that this provision may be negotiated with the village provided that an agreement is reached whereby:

(1) Other owners of properties which will benefit from such an extension have participated or agree to participate in the cost thereof to an extent satisfactory to the petitioner and the village; or

(2) A system of charges for connecting or utilizing such extended lines for distribution or collection service by said benefitting owners/properties is established by the Chief Administrative Officer of the village sufficient to recover the costs allocated thereto and advanced by the parties to the construction of the lines, within the provisions of this chapter, and which system of beneficial charges are hereby required and authorized to be imposed, collected and applied by the village as provided in the agreement.  
(Ord. 231, passed 12-17-2010)

#### **§ 51.27 INSTALLATION OF NEW WATER SERVICE LINES AND METERS.**

(A) The village will install, upon application and permit (issued upon certification of compliance with building and plumbing codes, zoning ordinances, subdivision regulations, licensing, other applicable rules and regulations of the village, and the payment of applicable main line and new service connection charges, fees and pavement cut costs, if any) a connection to the main water distribution line by providing the necessary pipe, fitting, meter and meter box to a service point at or about the property line. This location shall be and remain readily accessible to village reading and service personnel, shall be so warranted by the user upon the application for service and shall be maintained thereafter free of obstruction and interference by the user.

(B) The village will retain title to and maintain, repair and replace, at its expense, the service connection, including the meter. Any relocation required by the user or necessitated by a change of use shall be at the user's expense.  
(Ord. 231, passed 12-17-2010)

#### **§ 51.28 INSTALLATION OF NEW SEWER SERVICE LINE AND CONNECTION.**

(A) Each user of the sewer service of the village shall be separately connected to the main collector line except as may be permitted by the appropriate rules and regulations of the village.

(B) The property owner, or user, upon application and permit, as specified in § 51.27(A), shall install, at his or her expense and in accordance with the plumbing code and village rules and regulations, the sewer connection at the main line and the service line from the main line to his or her point of use. This connection and service line must be inspected and approved by the village.

(C) The property owner shall be responsible for the operation and maintenance of this service line and for the proper installation thereof.

(D) Any pavement cut required shall be made in accordance with rules, regulations and charges of the village and shall be submitted for approval at the time of application.

(E) All charges, fees, assessments for sewer installation, main line charges and service fees are due and payable upon application except when payment is deferred, by agreement, and said costs are included in the water system billing and subject to the same provisions for payment.  
(Ord. 231, passed 12-17-2010)

#### **§ 51.29 NEW SERVICE CHARGES.**

(A) Schedules of basic rates, charges and fees for installations, pursuant to §§ 51.27 and 51.28, shall



be set by resolution upon recommendation of the Chief Administrative Officer of the village and adoption by the Board of Trustees.

(B) Schedules adopted by resolution pursuant to this section shall be reviewed periodically by the Chief Administrative Officer to assure that the rates, fees, and charges established are maintained at not less than basic costs of materials, equipment, labor and other related costs for said installation of service with consideration of comparable non-public construction bid costs. These schedules shall also provide for periodic adjustments as deemed necessary. (Ord. 231, passed 12-17-2010)

**§ 51.30 SEWER RATES.**

(A) *In-village.*

Residential	\$21.10 per month plus an additional charge of \$1.50 per thousand gallons or fraction thereof of water used and registered by meter and using an average of usage for the months of December, January and February
Non-residential, non-commercial	Same as Residential
Commercial	\$25.00 per month plus an additional charge of metered water usage of:
	\$1.50 per thousand gallons from 0 plus to 10,000 gallons
	\$3.20 per thousand from 10,000 plu to 100,000 gallons
	100,000 gallons plus* (See note below)
*NOTE: Special rates to be established by the Chief Administrative Officer of the village following analysis of the requirements for service	

(B) *Out-of-village limits.*

Residential	\$23.44 per month plus an additional charge of \$1.54 per 1,000 gallons or fraction of water used and registered by meter and using an average of usage for the months of December, January and February
Non-residential, non-commercial	Same as residential
Commercial	Special rates to be established by the Chief Administrative Officer of the village following analysis of the requirements for service

(Ord. 231, passed 12-17-2010)

**§ 51.99 PENALTY.**

(A) It shall be unlawful to use or cause to be used any water produced or distributed by the Village Water and Sewer Department except water distributed through an authorized meter or obtained by a means authorized by village ordinance or Village Water and Sewer Department administration rules and regulations and for which applicable deposit and payment is made to the village.

(B) It shall be unlawful to discharge or cause to be discharged any liquid waste into the collection system operated by the village without having obtained permits, made approved connections, and for which payment is made to the village.

(C) It shall be unlawful for any person to willfully damage or tamper with any property of the Water and Sewer Department including, but not limited to, wells, pump stations, reservoirs, lift stations, distribution lines, meters, meter service line connections, meter boxes, gate valves, manhole covers or gates, sewer lift stations and lines.

(D) Any person convicted of a violation of divisions (A), (B), or (C) herein shall be subject to a fine of not more than \$300 or by imprisonment not

exceeding 90 days or both. The court may sentence and may impose the fine stipulated above on any corporation, club, organization or unincorporated association which has been convicted of a violation of this chapter.

(Ord. 231, passed 12-17-2010)

## CHAPTER 52: WATER CONSERVATION

### Section

52.01	Name
52.02	Purpose
52.03	Application
52.04	Declaration of policy
52.05	Implementation of water conservation policy
52.06	Administration of water conservation measures
52.07	Exceptions for enforcement
52.08	Village sponsored incentive program
52.09	Water emergency restriction of water use
Appendix A: Emergency Water Management Plan	

### § 52.01 NAME.

This chapter shall be known as the Village of Milan Water Conservation Chapter. The chapter shall both require and encourage all users of water within the municipal water service area to reduce water consumption and waste.  
(Ord. 204, passed 1-20-2005)

### § 52.02 PURPOSE.

The purpose of this Water Conservation Chapter is to provide the village the means to reduce per capita water demands by requiring its citizens and businesses to comply with prescribed water conservation regulations and by establishing financial incentives for water conservation.  
(Ord. 204, passed 1-20-2005)

### § 52.03 APPLICATION.

The restrictions contained in the Water Conservation Chapter shall apply to all users of the public utility-provided water. The outdoor vegetation watering restrictions in § 52.05(B) shall not apply to users of irrigation water provided by an acequia association or irrigation district, or from domestic wells.  
(Ord. 204, passed 1-20-2005)

### § 52.04 DECLARATION OF POLICY.

The governing body finds and determines that encouraging and requiring the adoption of water conservation strategies is an effective and low-cost means to balance water demands with limited available water supplies and production capabilities.  
(Ord. 204, passed 1-20-2005)

### § 52.05 IMPLEMENTATION OF WATER CONSERVATION POLICY.

#### (A) *Indoor conservation.*

(1) Water system leaks from private water lines shall be repaired by the owner or property manager within 7 days of initial notification by the Water Utility Department. Proof of repair shall be provided to the water utility upon completion of the repair. A 7-day extension may be granted depending on the severity of the leak.

(2) For all new and remodeling construction, the water conservation plumbing standards set out below shall be met. In addition, with the exception of division (d) below, all existing

## Milan - Public Works

commercial and industrial water users are encouraged to retrofit their facilities with the plumbing fixtures noted below.

(a) *Water closets.* Water closets, either flush tank, flushometer tank, or flushometer valve operated, shall have an average consumption of not more than 1.6 gallons (6.1 liters) of water per flush. Water closets that use a quick closing flapper to limit the flush to 1.6 gallons per flush shall not be used to satisfy this requirement.

(b) *Urinals.* Urinals shall have an average water consumption of not more than 1.0 gallon (3.8 liters) of water per flush, with the exception of blowout urinals for public use in stadiums, race courses, fairgrounds, and other structures used for outdoor assembly and for similar uses.

(c) *Non-metered faucets.* Lavatory and kitchen faucets shall be equipped with aerators and shall be designed and manufactured so that they will not exceed a water flow rate of 2.5 gallons (9.5 liters) per minute.

(d) *Metered faucets.* Self-closing or self-closing metering faucets shall be installed on lavatories intended to serve the transient public, such as those in, but not limited to, service stations, train stations, airports, restaurants, schools and convention halls. Metered faucets shall deliver not more than 0.25 gallons (1.0 liter) of water per use.

(e) *Shower heads.* Shower heads shall be designed and manufactured so that they will not exceed a water supply flow rate of 2.5 gallons (9.5 liters) per minute. Emergency safety showers are exempted from this provision.

(f) *Installation.* Water-conserving fixtures shall be installed in strict accordance with the manufacturers' instructions to maintain their rated performance.

(g) *Certificate of compliance.* For all new and remodeling construction, all of the requirements regarding water conserving devices mentioned in division (A)(2)(a) through (e) shall be

certified by a certificate of compliance by a licensed mechanical contractor or plumbing permittee before or at the time of the final plumbing inspection.

(h) *Authority to permit exceptions.* The Village Building Inspector and the village engineer have the authority to permit exceptions to any case necessary to maintain adequate health and sanitation standards.

(B) *Outdoor irrigating schedules.*

(1) The following are outdoor irrigating schedules for residential and commercial properties.

(a) The even numbered side of the street shall be watered only on Wednesday, Friday and Sunday;

(b) The odd numbered side of the street shall be watered only on Tuesday, Thursday and Saturday.

(c) For commercial building or properties having both odd and even numbers, the number shown on the water utility's records shall control.

(d) Playing in water from the hose shall be allowed only on designated watering days.

(e) It is emphasized that most landscaping can remain healthy and attractive with much less frequent irrigating than the 3 days per week allowance.

(f) For a location lacking an identifiable odd or even-numbered address, the owner or managing agent shall select an odd-even schedule to which it chooses to adhere provided the Village Water Utility Department is so notified.

(g) A large irrigation user may designate a portion of its landscape area as odd and a portion as even if active use of the landscaping and/or water pressure limitations constrain the owner's ability to irrigate the entire landscaped area in either an odd

or even day. The user must notify the Village Water Utility Department and make the necessary irrigating arrangements and allow inspection of their property to determine if the division is crucial.

(2) From April 1 to August 30, all outdoor irrigation is allowed only before 10:00 a.m. or after 6:00 p.m. except where water conserving irrigation practice such as drip irrigation is used to minimize evaporation losses. No amount of water is permitted to run off the area of application.

(C) Exemptions.

(1) Water sources and irrigation methods.

(a) The following sources of water and types of irrigation methods and applications are exempt from the 3-day per week outdoor irrigating restriction in division (B) above.

(b) These sources and irrigation methods are not exempt from the time of day irrigation restriction:

1. Treated effluent;
2. Water harvested from precipitation;
3. **GREY WATER** is defined as household wastewater other than from water closets and kitchen sinks; and
4. The irrigation of outdoor plants which are in movable containers

(2) Newly installed turf sod and seed.

(a) Newly installed turf sod and seed shall be exempt from 3-day per week irrigation restriction in division (B) above, for a 60-day period after its purchase or installation. New turf shall not be exempt from the time-of-day irrigation restriction. Plant nurseries and landscape contractors shall attach a village-provided notification of the 60-day exemption and subsequent requirement to comply with

division (B) above to the bill of sale. Citizens shall retain the notification from the Public Works Department and bill of sale during the 60-day exemption period as proof of the exemption. The exemption is for newly installed turf sod or seed only and not for other new or existing landscaping.

(b) Golf courses and sports fields created after 8-25-2004 shall comply with the following requirements:

1. Sports fields or golf courses created after 8-25-2004, shall not install turf grass sod or turf grass seed mixes unless pre-approved by the Village of Milan Board of Trustees;

2. Sports fields or golf courses created prior to this date which have artificial turf shall not convert to natural turf;

3. Sports fields or golf courses created prior to this date which have natural turf may be permitted to rehabilitate the natural turf if the area needing to be rehabilitated does not exceed 75% of the turf area. Rehabilitation of more than 75% shall not be permitted. The turf areas in excess of 75% shall be replaced with artificial turf;

4. This section shall apply to all customers of the Village of Milan water system including Village of Milan owned sports fields and/or golf courses. This shall also apply to sports fields and/or golf courses which are part of a public or private preschool, elementary school, junior high school, high school, college or university; and

5. As appropriate, violations of this section shall be considered a misdemeanor. In addition, the village may discontinue water service following a 24-hour notice, or pursue enforcement of these specific performance requirements in an appropriate court of law.

(3) *Nursery stock.* Plants being irrigated for retail or wholesale sale are exempt from division (B) above.

(4) *Landscape maintenance and contracting companies.* All manual watering by landscape maintenance and contracting companies are exempt from division (B) above. Landscape companies setting timed irrigation systems shall ensure that the systems comply with division (B) above.

(5) *Public parks, public school athletic fields and public roadside landscapes.* This provision is adopted in order to serve community needs for active and passive recreation deemed essential to the quality of life for persons of all ages and to protect tax paid investments in landscaped facilities. Woody plant materials in roadside landscapes may be irrigated once a week. Roadside landscapes shall mean those located within the public right-of-way completed as part of a publicly funded project and maintained by the village. Public parks, public school athletic fields and roadside landscapes shall be reviewed and retrofitted by December of 2005 to incorporate the most efficient available technology in irrigation and xeric plant selection.

(6) *Authority to permit exceptions.* The Village Manager has the authority to permit exceptions to this chapter provided the water conservation objective is not compromised.

(7) *Potable water use for certain construction and landscaping purposes.* Refer to division (C)(3) above.

(8) *Washing of vehicles.* The washing of vehicles and other types of mobile equipment shall be done only with a hand held bucket or hand held hose equipped with a functioning shutoff nozzle for quick rinses. This restriction does not apply to the washing of vehicles or mobile equipment at a commercial car wash or commercial service station. When used in this section, bucket means a container holding 5 gallons of water or less.

(D) *Conservation signage.*

(1) Public, semi public, and governmental entities shall post not less than 1 water conservation sign in each restroom and shower facility, the size of which shall not be less than 8-1/2 inches by 11 inches. These entities may use a village-provided sign or

develop their own sign using village-provided text, the text of which shall cite this section. A public facility shall not include those facilities solely used by the entity's employees. A semi-public facility shall include all private clubs and fraternal organizations.

(2) Hotels, motels, other lodging facilities shall provide a water conservation informational card or brochure in a visible location in each guest room. These facilities may use village-provided literature or develop their own using village-provided text. Lodging facilities shall provide an opportunity for guests staying multiple nights to indicate whether or not they want linen and towels changed daily.

(3) Retail plant nurseries shall provide their end-use customers with village-provided low water use landscape literature and water efficient irrigation guidelines at the time of sale of any outdoor perennial plants. An end-use customer is the person or persons who will ultimately own the plant material. A landscape contractor or architect is not an end-use customer. In order to facilitate the purchase of low water use plants, nurseries are strongly encouraged to tag or sign their low water use plants that require little to no supplemental watering once established. For the sale of all turf or grass seed or sod, the customer shall be given village-provided literature indicating the restrictions on planting turf sod and seed per § 52.05(C)(2).

(4) Landscape contractors, maintenance companies and architects shall provide their prospective clients with village-provided low water use landscape literature and water efficient irrigation guidelines at the time of presenting a service contract to the prospective client. Landscape professionals are strongly encouraged to educate their customers regarding the operation of their timed irrigation systems.

(5) Title companies and others closing real estate transactions shall provide the entity purchasing a home, business, or property with village-provided indoor and outdoor conservation literature at the time of closing.

(6) Village departments shall provide indoor and outdoor conservation literature to:

(a) All persons applying for a building permit from the permit and development review division; and

(b) All customers initiating new water service from the village water division.

(E) *Water waste prohibited.*

(1) No person, firm, corporation, county, state, federal, or municipal facility or operation served by the village water utility shall cause or permit the occurrence of water waste. In general, the occurrence of an unforeseeable or unpreventable failure or malfunction of plumbing and irrigation system hardware shall not be deemed sufficient grounds for issuance of a citation or other enforcement proceedings unless and until the village issues a formal warning notice.

(2) If operating the system is integral to the operation of the facility, the village may at its discretion provide a period of time in which to remedy the violation prior to commencing formal enforcement action. Once a warning notice or an initial citation has been issued for an outdoor occurrence, subsequent water waste events shall be subject to strict enforcement. Strict enforcement may include the issuance of citations and any other actions as the village deems necessary to bring the water user into compliance. For indoor water waste events and for those water waste events outdoors caused by a faulty system which is integral to the operation of the facility, the waste must be abated within 7 days of the issuance of a warning notice or initiation of enforcement action. Enforcement action shall be commenced if the waste continues to occur beyond the 7-day period.

(F) *Scope of water waste section.*

(1) *Prohibitions.* The following uses of water are defined as **WASTING WATER** and are prohibited:

(a) The watering of grass, lawns, groundcover, shrubbery, trees, and open ground, in a manner or to an extent that allows water to flow onto adjacent property or onto any street, alley or other public right-of-way;

(b) Watering outdoor vegetation excessively so that water ponds on site;

(c) Failing to repair a water leak within 7 days of the discovery of same; or

(d) Washing sidewalks, driveways, parking areas, tennis courts, patios and other impervious surfaces with a hose, (except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety or welfare). When used in this section, **IMPERVIOUS SURFACE** means any surface covered with nonporous material.

(2) *Exemptions.*

(a) Water waste shall not include:

1. Flow resulting from firefighting or routine inspection of fire hydrants or from training activities;

2. Water applied to abate spills of flammable or otherwise hazardous materials;

3. Water applied to prevent or abate health, safety or accident hazards when alternate methods are not available;

4. Water which reaches or flows onto adjacent property or public or private right-of-way when caused by vandalism, wind, emergencies or acts of God;

5. Flow resulting from a routine inspection or maintenance of the village water utility system;

6. Water used by the Village of Milan in the installation, maintenance, repair or replacement of public facilities and structures including but not limited to traffic control devices, storm and sanitary sewer structures and road or street improvements; or

7. Water used by contractors or utilities including but not limited to saw cutting of pavement, compaction or other use required under terms of their contract.

(b) Fugitive water shall not include:

1. Storm run-off, including snowmelt run-off;

2. Flow resulting from temporary village water utility system failures or malfunctions;

3. Water applied, such as in the cleaning of hard surfaces, to prevent or abate public health, safety or accident hazards when alternate methods are not available. The washing of outdoor eating areas and sidewalks is not included in this exemption;

4. Flow resulting from vandalism, high winds, emergencies and acts of God; and

5. The occurrence of an unforeseeable or unpreventable failure or malfunction of plumbing or irrigation system hardware, prior to the issuance of a formal warning notice issued to the water user. Once a formal warning notice has been issued, the water user is instructed to not operate the faulty system until it is appropriately repaired, unless operating the system is integral to the operation of the facility. Once a warning notice has been issued, subsequent fugitive water events at the same location will be subject to issuance of citations.

(G) *Eating establishments.*

(1) All public and private eating establishments shall be encouraged to provide water or other beverages only upon request.

(2) Eating establishments serving beverages in single-serving containers shall only serve an accompanying glass if specifically requested by the customer.

(3) These provisions shall be clearly communicated to the customer in at least 1 of the following manners: on the menu; by use of a "table tent" or similar signage on the table; or posting in a location clearly visible to all customers.

(4) All catering and banquet operations shall comply with the provisions of this section. (Ord. 204, passed 1-20-2005)

*Cross-reference:*

*For provisions concerning enforcement, see § 52.06*

#### **§ 52.06 ADMINISTRATION OF WATER CONSERVATION MEASURES.**

(A) The Public Works Director shall be responsible for the enforcement of this chapter and may prescribe policies, rules, or regulations to carry out the intent and purposes of the chapter.

(B) *Penalty/injunctive relief authorized.*

(1) *Notice to abate.* On determination by village staff that a violation of the chapter exists, any responsible party shall be issued a verbal and written warning by the village to abate the nuisance immediately.

(2) *After notification.* After notification should any responsible party fail to abate the nuisance for any reason after 7 days that party shall be charged with violation of this chapter and may be found guilty of a misdemeanor. Upon conviction the party shall be



fined an amount not exceeding \$500 or by imprisonment not exceeding 90 days or both. Each occasion this chapter is violated shall be considered a separate offense.

(3) *Discontinuance of water service.* The village may discontinue service pursuant to its rules and regulations, if, upon verbal and written notification by village staff that a charge of violation of any of the provisions of the chapter has occurred and the responsible party has failed to abate the nuisance within the required time period.

(4) *Variances.* A variance may be issued by the governing body provided that all options for abatement through modified water management have been exhausted. The variance may be issued for a period of not to exceed 1 year and shall stipulate both corrective measures and a schedule for completion. (Ord. 204, passed 1-20-2005)

#### § 52.07 EXCEPTIONS FOR ENFORCEMENT.

The following shall constitute exceptions from compliance with the provisions of this chapter concerning outdoor vegetation watering restrictions and miscellaneous water use restrictions.

(A) The water flow is a result of natural events such as rain or snow unless user is watering at the same time.

(B) The water flow is a result of temporary malfunctions of or vandalism to the municipal water supply system.

(C) The water flow is a result of water used for fire fighting purposes, including the inspection and pressure testing of fire hydrants, or the use of water for fire fighting training activities.

(D) The use of water is required for the control of dust or the compaction of soil. Revegetation of bare or under vegetated areas will be used where feasible to control dust, thereby reducing the amount of water needed for this purpose.

(E) The water is used to wash down areas where flammable or otherwise hazardous material has spilled, creating a dangerous condition.

(F) The water is used to prevent or abate public health, safety or accident hazards when alternate methods are not available.

(G) The water is used for routine inspection or maintenance of the public water supply system.

(H) The water is used to facilitate construction within public right-of-way in accordance with village requirements and good construction practices.

(I) The use of the water is permitted under a variance granted by the village.

(J) The water is used for street sweeping, sewer maintenance or other established utility practices. (Ord. 204, passed 1-20-2005)

#### § 52.08 VILLAGE SPONSORED INCENTIVE PROGRAM.

The governing body may adopt other water conservation programs, including but not limited to, rebates or vouchers for water saving devices. The programs shall be adopted by resolution and shall not exceed funds allocated by the governing body each fiscal year.

(Ord. 204, passed 1-20-2005)

#### § 52.09 WATER EMERGENCY RESTRICTION OF WATER USE.

(A) The Village Mayor may declare a water emergency in the event of a severe drought or any condition which significantly reduces the village's ability to supply water in order to protect the public health, safety or welfare or to preserve the water supply.

(B) During a water emergency, the Village Manager, with approval from the Board of Trustees, may implement water use restrictions set forth on the Emergency Water Management Plan.

(Ord. 204, passed 1-20-2005)

## APPENDIX A: EMERGENCY WATER MANAGEMENT PLAN

### Section

- I. Short title
- II. Purpose
- III. Scope
- IV. Declaration of policy
- V. Authorization
- VI. Application
- VII. Water emergency management stages
- VIII. Mandatory conservation phase implementation
- IX. Penalty
- X. Severability
- XI. Emergency water regulations; publication of terms of water use

### I. SHORT TITLE.

This document may be cited as the Emergency Water Management Plan.

### II. PURPOSE.

The purpose of this is to provide the village the means to implement measures for controlling water use in response to drought, water-system-related emergencies, or catastrophic events that may disrupt systems operations.

### III. SCOPE.

There is established a Village of Milan Water Emergency Management Plan which will apply to all customers of the village's water system.

### IV. DECLARATION OF POLICY.

A. The governing body, by and through its public utilities department, finds and determines that a water service emergency exists based upon the occurrence of 1 or more of the following conditions:

1. A general water supply shortage due to increased demand or limited supply;
2. Distribution or storage facilities of the village water utility are inadequate to meet demand or minimum quality standards; and
3. A disruption of the supply, storage, and/or distribution facilities of the village water utility occurs.

B. It is hereby declared that, because of the conditions prevailing in the Village of Milan, the general welfare requires that the village maximize the beneficial use of its available water resources to the extent to which it is capable. The waste or unreasonable use of water is prohibited. The conservation of water is to be practiced with a view to the reasonable and beneficial use thereof in the interest of the citizens of the Village of Milan and for the public health, safety and welfare.

### V. AUTHORIZATION.

A. The Village Manager is authorized to determine and declare that a water emergency exists in any and/or all parts of the village or County of Cibola that is served by the municipal water system, and upon the determination, to promulgate regulations, rules, and conditions relative to the time of using water, the purpose or purposes for which it

may be used and any other necessary limitations as will, in the Village Manager's opinion, relieve the water shortage in any section or sections of the water service area.

B. The Village Manager, or the Village Manager's designee, following public notice, is hereby authorized and directed to implement the water emergency management plan through the applicable provisions of this section, upon the Village Manager's determination that implementation is necessary to protect the public health, safety and welfare, under the following conditions.

1. In the event of an unforeseeable disaster or water emergency such as an earthquake, or other catastrophic event affecting the San Andres / Glorietta Aquifer and Bluewater Basin water supply, or other major disruption in the water supply, the governing body shall authorize the implementation plans for Stages 3 and 4 of the emergency provisions of Section VII. Public notice will follow enactment of the provision.

2. In the event of a foreseeable water emergency, such as extended drought conditions, the Village Manager, or the Village Manager's designee, shall be authorized to implement the applicable provisions of Section VII, upon public notice.

## VI. APPLICATION.

The provisions of this section shall apply to all persons, customers and property served by the village water utility wherever situated. With the exception of drought emergency surcharges, these provisions shall also apply to all water users within the corporate limits to the Village of Milan including those on private domestic wells.

## VII. WATER EMERGENCY MANAGEMENT STAGES.

No customer of the Village of Milan water utility shall make, cause, use or permit the use of water from the village water system for residential, commercial, industrial, agricultural, governmental or any other

purpose in a manner contrary to any provision of the Conservation Chapter 52, or in an amount in excess of that use permitted by the following Water Emergency Management Stages which are in effect pursuant to action taken by the Village Manager, or the designee (Public Works Director), or the governing body. Stages 1 and 2 may be declared by the Village Manager or the designee (Public Works Director). Stages 3 and 4 may be declared by the governing body. If the severity of the water emergency lessens, the Village Manager may downgrade the water shortage to a lower stage. The water use restrictions, drought emergency surcharges, and fines of each stage apply to all higher level stages, unless the higher stage has a more stringent requirement. At no time shall water be wasted or used unreasonably.

A. *Unreasonable uses of water.* Unreasonable uses of water shall include but are not limited to the following practices:

1. A customer shall not let water leave the customer's property by drainage onto adjacent properties or public or private roadways or streets due to excessive irrigation and/or uncorrected leaks.

2. A customer shall not fail to repair a water leak upon initial notification.

3. A customer shall not use water to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate safety or sanitation hazards.

B. *Stage 1. Voluntary Compliance-Water Advisory.* Stage 1 applies during periods when the possibility exists that the Village of Milan water utility will not be able to meet all of the water demands of its customers by up to 15% of the annual demand projection. The public will be informed on current storage levels in the village water system. The long-range forecasts for precipitation will be provided as well as a possibility of implementing mandatory conservation measures if drought conditions persist. The public will be notified by mail and through the news media on any restrictions to reduce their water use. All elements of Stage 2 and 3 shall, during Stage 1, apply on a voluntary basis only.

C. *Stage 2. Mandatory Compliance-Water Watch.* Stage 2 applies during periods when the probability exists that the Village of Milan water utility will not be able to meet from 16% to 35% of the water demands of its customers. The Stage 2 implementation plan is as follows.

1. Implement leak detection and repair program.
2. Reduce flushing of water mains, sewers, storm drains, and streets to the minimum necessary to maintain sanitary conditions.
3. Reduce frequency and duration of irrigation at public landscape sites such as golf courses, athletic fields, parks, cemeteries and greenbelts.
4. Nonessential water uses such as ornamental fountains; pool filling; car, bus, and heavy equipment washing; washing and steam cleaning of building exteriors is prohibited.

D. *Stage 3. Mandatory Compliance-Water Warning.* Stage 3 applies during periods when the Village of Milan water utility will not be able to meet from 36% to 50% of the water demands of its customers in addition to Stage 1 and 2 implementation plan, for Stage 3, the village must:

1. Implement a special pricing structure;
2. Curtail irrigation at athletic fields, parks, cemeteries and greenbelts;
3. Curtail fairway irrigation at all public and private golf courses using public water supplies, and reduce watering of tees and greens to a minimum; and
4. Prohibit all outdoor water use.

E. *Stage 4. Mandatory Compliance-Water Emergency.* Stage 4 applies when a major failure of any supply or distribution facility, whether temporary or permanent, occurs in the water distribution system of the federal, state or other water authorities, or the village water utility, upon which supply of water the

municipal water system relies. In addition, if these or other factors lead to a probable shortage in excess of 50% of anticipated demand, the Stage 4 implementation plan will be activated. Upon implementation by the governing body and publication of notice, the following measures shall apply when potable water is used:

1. All outdoor irrigation of turf and ground cover is prohibited with the exception of plant materials classified to be rare, exceptionally valuable or essential to well being of the public at large or rare animals. Irrigation of trees and shrubs is permitted only by hand-held hose equipped with a positive shut-off nozzle, hand-held container or drip irrigation system. The above restrictions do not apply to public parks, public school athletic fields, and roadside landscapes which shall reduce irrigation permitted in the Water Conservation Chapter 52.

2. The use of water at commercial nurseries, commercial sod farms and similarly situated establishments shall be reduced in volume by an amount determined through approval of the Stage 4 implementation plan by the governing body.

3. The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment is prohibited. The use of water by all types of commercial car washes or commercial vehicle service stations and not in the immediate interest of the public health, safety and welfare shall be reduced in volume by an amount determined through approval of Stage 4 implementation plan by the governing body. Further, washings are exempt from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleanings such as refuse collection trucks and vehicles used to transport food and perishables.

4. The filling, refilling or adding of water to swimming pools, spas, ponds and artificial lakes is prohibited except where this use is storage for a water supply.

5. The watering of all golf course areas is prohibited.

6. Use of water from fire hydrants shall be limited to fire fighting or other activities immediately necessary to maintain the health, safety and welfare of the citizens by the municipal system.

7. All restaurants are prohibited from serving water to their customers except when specifically requested by the customers.

8. Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire or sanitation hazards.

9. The operation of any ornamental fountain or similar structure is prohibited except for short periods of time to prevent damage.

10. The use of water for commercial, manufacturing or processing purposes shall be reduced in volume by an amount determined through approval of the Stage 4 implementation plan by the governing body.

11. All sales of potable water outside of the water service area shall be discontinued, with the exception of sales previously approved by the governing body.

12. No new construction meters will be issued. Construction water shall not be used for earth work or road construction purposes. Construction projects necessary to maintaining the health, safety and welfare of the public are exempt from these regulations.

13. Except for property for which a building permit has been issued, no new building permit(s) shall be provided, except in the following circumstances:

- a: For projects necessary to protect the public's health, safety and welfare;
- b: When using reclaimed water;
- c: When the recipient of the building permit can demonstrate that no net increase in water use will occur; or

d: Where the recipient of the building permit provides a conservation offset.

14. Stage 4 will be terminated by the governing body.

15. In addition to Stage 1, 2, and 3 implementation plans, Stage 4 limits the amount of water each customer can use and take legal action as needed to achieve compliance.

#### **VIII. MANDATORY CONSERVATION PHASE IMPLEMENTATION.**

The Village Water Utility shall monitor the projected supply and demand for water by its customers on a daily basis during periods of emergency or drought and shall recommend to the Village Manager the extent of the conservation required through the implementation and/or termination of particular conservation stages, to prudently plan and supply water to its customers. Thereafter, the Village Manager may order the implementation or termination of the appropriate phase of water conservation in accordance with the applicable provisions of Section VII.

#### **IX. PENALTY.**

(A) It shall be unlawful for any person, corporation or association to violate the provisions of this Emergency Water Management Plan.

(B) Unless otherwise stipulated, violations of these provisions shall be a misdemeanor subject to penalties provided in § 52.06 of the Water Conservation Chapter. The Public Utilities Department may alternatively seek injunctive relief in the district court. In addition to any other remedies which the public utilities department may have for the enforcement of this Emergency Water Management Plan, service of water may be discontinued or appropriately limited to any customer who willfully uses water in violation of any provisions thereof.

**X. SEVERABILITY.**

If any provision, section, division, sentence, clause or phrase of this Emergency Water Management Plan, or the application of same to any person or set of circumstances is, for any reason, held to be unconstitutional, void, or invalid, the invalidity of the remaining portions of this section shall not be affected, it being the intent of the governing body in adopting this section that no portions, provision, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this section are declared to be severable for that purpose.

**XI. EMERGENCY WATER REGULATIONS;  
PUBLICATION OF TERMS OF WATER USE.**

Upon the emergency declaration by the governing body, it shall be the duty of the administration to give public notice by publishing a notice giving the extent, terms, and conditions respecting the use and consumption of water, at least once in a newspaper of general circulation in Milan; that upon the declaration and publication of the notice due and proper notice shall be deemed to have been given each and every consumer supplied with water by the municipal water system. The declaration of any stage beyond Stage 1 shall be made by public announcements and shall be published a minimum of 1 time for 3 consecutive days in a daily newspaper of general circulation. The stage designated shall become effective immediately upon announcement.





## CHAPTER 53: WATER PRETREATMENT

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**GENERAL PROVISIONS****§ 53.001 PURPOSE.**

(A) This chapter sets forth uniform requirements for all uses of and discharges into the POTW serving the Village of Milan, hereinafter referred to as the village, and enables the village to comply with all applicable state and federal laws and regulations pertaining to wastewater treatment and industrial pretreatment.

(B) The purpose of this chapter is:

(1) To prevent the introduction of pollutants into the POTW which may cause injury to the public, the POTW personnel, or the POTW;

(2) To prevent the introduction of pollutants into the POTW which may interfere with the operation of the system, cause the POTW to violate its NPDES permit, or contaminate the resulting sludge;

(3) To prevent the introduction of pollutants into the POTW which may pass through the system inadequately treated into receiving waters or into the atmosphere;

(4) To improve the opportunity to recycle and reclaim sludge from the system;

(5) To comply with all state and federal regulations in connection with the discharge of sewage waste;

(6) To prevent the introduction of pollutants into the POTW which may preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal and to provide an equitable distribution of the cost for acquisition, construction, reconstruction, maintenance and operation of the POTW; and

(7) To provide for the adoption, by resolution, of regulations to further promote and effect the above enumerated purposes.

(Ord. 165, passed 7-20-1994)

**§ 53.002 LEGAL AUTHORITY.**

This chapter authorizes the control authority to:

(A) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users;

(B) Regulate the discharge of pollutants that could interfere with the reclamation or disposal of wastewater or sludge, cause the plant to exceed the NPDES effluent limitations, or cause pass-through of pollutants to the receiving stream;

(C) Prohibit unauthorized or unpermitted discharges;

(D) Require compliance with applicable pretreatment standards and requirements by industrial users;

(E) Prohibit the discharge of pollutants that could interfere with or inhibit the biological treatment processes at the plant or cause pass-through to the receiving stream;

(F) Enforce the national categorical pretreatment standards (as promulgated), prohibited discharge standards and the local limitations;

(G) Control, through permit, order or similar means, the contribution to the POTW by each industrial user;

(H) Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements and the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance;

(I) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance or noncompliance;

(J) Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement, including the ability to seek injunctive relief, to seek or assess civil or criminal penalties in at least the amount of \$999 a day for each violation;

(K) Recover from the users the costs of damages to the POTW or the environment, any fines, penalties or legal fees resulting from NPDES or other POTW permit violations and any other costs incurred as a result of industrial discharge;

(L) Immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons;

(M) Halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW; and

(N) Comply with the confidentiality requirements set forth in 40 C.F.R. pt. 403.14.  
(Ord. 165, passed 7-20-1994)

### § 53.003 POLICY.

This chapter shall apply to all persons who are, by contract or agreement with the village, dischargers to the POTW. The control authority shall administer and enforce the provisions of this chapter, except as otherwise provided herein by the village.  
(Ord. 165, passed 7-20-1994)

### § 53.004 DEFINITIONS.

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

**ACCIDENTAL SPILL PREVENTION PROGRAM (ASPP).** The program conducted by the control authority to track potential spill hazards within

the industrial community. It includes requiring an accidental spill prevention plan from each industrial user that identifies the methods of spill prevention, response, and reporting conducted by the user.

**ACT or THE ACT.** The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

**APPROVAL AUTHORITY.** As defined in 40 CFR pt. 403.3(c), the Director in an NPDES state with an approved state pretreatment program and the appropriate regional administrator in a non-NPDES state or NPDES state without an approved state pretreatment program. For the purposes of implementation of the pretreatment program for the Village of Milan, the approval authority is the State of New Mexico.

**APPROVED METHOD OR TEST PROCEDURE.** Analyses performed in accordance with the analytical test procedures approved under 40 C.F.R. pt. 136. Analysis for those pollutants not covered therein shall be performed in accordance with procedures approved by the approval authority.

**AUTHORIZED SIGNATORY.** As defined by 40 C.F.R. pt. 403.12(1):

(a) A responsible corporate officer, if the industrial user is a corporation; a **RESPONSIBLE CORPORATE OFFICER** means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

2. The manager of 1 or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively; or

(c) A duly authorized representative of the individual designated in division (a) or (b) of this definition if:

1. The authorization is made in writing by the individual described in divisions (a) or (b) of this definition;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company, and

3. The written authorization is submitted to the control authority.

**BIOCHEMICAL OXYGEN DEMAND (BOD).** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in 5 days at 20°C expressed in terms of weight and concentration (milligrams per liter (mg/l)) in accordance with an approved test procedure.

**CATEGORICAL USER.** An industrial user classified according to specific industrial subcategories for which separate regulations have been established under subparts of 40 C.F.R. Chapter I, Subchapter N. These regulations establish specific quantities or concentrations of pollutants or pollutant properties that may be discharged to a POTW.

**CHEMICAL OXYGEN DEMAND (COD).** A measure of the oxygen-consuming capacity of inorganic and organic matter present in water or wastewater expressed as the amount of oxygen consumed by a chemical oxidant in accordance with an approved test procedure.

**COMPATIBLE POLLUTANT.** Biochemical oxygen demand, suspended solids, pH, fecal coliform bacteria, and any additional pollutants in quantities that the POTW has the designed capacity to treat.

**COMPLIANCE SCHEDULE.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

**COMPOSITE SAMPLE.** As defined by 40 C.F.R. pt. 403 Appendix E, a sample comprised of a minimum of 12 aliquots collected over a period of no more than 24 hours. The sample may be collected manually or automatically.

**CONTROL AUTHORITY.**

(a) As defined in 40 C.F.R. pt. 403.12(a):

1. The POTW if the POTW's submission for its pretreatment program (Part 403.3(t)(1)) has been approved in accordance with the requirements of Part 403.11; or

2. The approval authority if the submission has not been approved; the POTW, the village, or a local authority responsible for implementation and enforcement of the approved pretreatment program.

(b) In this case, the **CONTROL AUTHORITY** is the Village of Milan and its authorized representatives.

**COOLING WATER.** Any water used for the purpose of carrying away excess heat, and which may contain biocides used to control biological growth or other additives to protect the system against corrosion, scaling or other deterioration.

**DISCHARGE.** An intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the

waters of the state, onto land or into wells from which it might flow or drain into the waters or into waters or onto lands outside the jurisdiction of the state, which pollutant enters the waters of the state or the United States. **DISCHARGE** includes the release of any pollutant into a POTW.

**DOMESTIC WASTEWATER.** The liquid waste or liquid borne waste:

(a) Resulting from the noncommercial preparation, cooking and handling of food; and/or

(b) Consisting of human excrement and similar wastes from sanitary conveniences.

**EPA.** The United States Environmental Protection Agency.

**EFFLUENT DATA.** Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics of any pollutant discharge. Effluent limitation means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological and other constituents of pollutants.

**FEDERAL CATEGORICAL PRETREATMENT STANDARDS.** Pretreatment standards as codified in 40 C.F.R. pt. 1(N), specifying quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced to a POTW by existing or new industrial users in specific industrial subcategories.

**FLOW-PROPORTIONED.** A composite sample that is collected continuously or discreetly. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of aliquot or to the total flow since the previous aliquot.

**FOOD SERVICE ESTABLISHMENT.** Any restaurant, eatery, food caterer, cafeteria or other institution processing and serving food such as motels, hotels, prisons or schools.

**GARBAGE.** Solid wastes from the domestic and commercial preparation, cooking, dispensing, handling, storage and/or sale of food, fruits, vegetables, poultry, fish or other aquatic organisms or meat.

**GRAB SAMPLE.** As defined in 40 C.F.R. 403 Appendix E, an individual sample collected over a period of time not to exceed 15 minutes. It is a single sample taken at neither a specific time nor flow and is representative of conditions or characteristics of the discharge at the time that it is collected.

**GREASE TRAP.** A device used for removal of oils, greases and/or food solids from a waste stream.

**HIGHEST RANKING OFFICIAL.** The industrial user's official having day-to-day managerial and operational responsibilities for the discharging facility.

**HOLDING TANK WASTE.** Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

**INCOMPATIBLE POLLUTANT.** Any pollutant which is not a compatible pollutant as defined in this section.

**INDIRECT DISCHARGE.** As defined in 40 C.F.R. pt. 403.3(g), the introduction of pollutants into a POTW from any non-domestic source regulated under §§ 307(b), (c) or (d) of the Act. The Act refers to the Clean Water Act and source, as defined in § 306(a) of the Act, means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

**INDUSTRIAL PRETREATMENT COORDINATOR (IPC).** The authorized representative of the control authority that implements and coordinates the pretreatment program.

**INDUSTRIAL USER or USER.** As defined in 40 C.F.R. pt. 403.3(h), a source of indirect discharge.

**INDUSTRIAL WASTE SURVEY QUESTIONNAIRE.** A request for information by the control authority of users of the POTW on discharge characteristics, operating procedures and schedules, water consumption, waste disposal methods and amounts.

**INTERFERENCE.** As defined in 40 C.F.R. pt. 403.3(i), a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): § 405 of the Clean Water Act, being 33 U.S.C. § 1345, the Solid Waste Disposal Act (SWDA), being 42 U.S.C. §§ 6901 *et seq.* (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, being 42 U.S.C. §§ 7401 *et seq.*, the Toxic Substances Control Act, being 15 U.S.C. §§ 2601 *et seq.*, and the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. §§ 1431 *et seq.* and 33 U.S.C. §§ 1401 *et seq.*

**LIQUID WASTE HAULER.** Any person who transports waste by way of truck or rail.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES).** The federal system for issuing, modifying, suspending, revoking and reissuing, terminating, monitoring and enforcing discharge permits pursuant to the Act.

**NONDOMESTIC WASTEWATER.** Any wastewater that is not domestic wastewater as defined in this section.

**ORDINANCE.** The ordinance, resolution or other local rules regulating use of and discharge into the POTW.

**PASS THROUGH.** As defined in 40 C.F.R. pt. 403.3(n), a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

**PERMIT.** Unless otherwise defined in this document, the discharge control mechanism issued by the control authority to a discharger to the POTW.

**PERMITTEE.** Any person who has an industrial discharge permit.

**PERSON.** Any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this state and any state or interstate agency. **PERSON** shall also mean any responsible corporate official for the purpose of enforcement action under this program.

**pH.** The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in moles per liter of solution. Solutions with a **pH** greater than 7 are said to be basic; solutions with a **pH** less than 7 are said to be acidic; **pH** equal to 7 is considered neutral. Analysis shall be performed in accordance with an approved test procedure.

**POLLUTANT.** Any dredged spoil, solid waste, holding tank waste, incinerator residue, sewerage, garbage, refuse, oil, grease, sewerage sludge, septage, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue directly or indirectly discharged into the waters of the state, the introduction of which renders these waters detrimental or immediately or potentially dangerous to the public health or unfit for public or commercial use. **POLLUTANT** includes both hazardous and nonhazardous pollutants.

**PRETREATMENT.** As defined in 40 C.F.R. pt. 403.3(q), the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by Part 403.6(d) (dilution).

**PROGRAM.** The industrial pretreatment program for the control authority.

**PUBLICLY OWNED TREATMENT WORKS (POTW).** As defined in 40 C.F.R. pt. 403.3(o), a treatment works as defined by § 212 of the Act, which is owned by a state or municipality (as defined by § 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from a treatment works.

**PUMPAGE.** The oils, greases, liquids and solids removed from a container by pumping.

**SIGNIFICANT INDUSTRIAL USER (SIU).** As defined in 40 C.F.R. pt. 403.3(t)(1), except as provided in paragraph (t)(2) of that section:

(a) All industrial users subject to Categorical Pretreatment Standards under 40 C.F.R. pt. 403.6 and 40 C.F.R. Chapter I, Subchapter N; and

(b) Any other industrial user that:

1. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

2. Contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

3. Is designated by the control authority as defined in 40 C.F.R. pt. 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 C.F.R. pt. 403.8(0)(6)).

**SIGNIFICANT NONCOMPLIANCE.** For the purposes of meeting the requirements of annual public notification of violators, and as defined in 40 C.F.R. pt. 403.8(0)(2)(vii), an industrial user is in significant noncompliance if its violation meets 1 or more of the following criteria:

(a) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a 6 month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(b) Technical review criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a 6 month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent a discharge;

(e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

**STATE.** The State of New Mexico.

**SLUG.** As defined by 40 C.F.R. pt. 403.5(b)(4), any pollutant, including oxygen demanding pollutants (BOD and the like) released in a discharge at a flow rate and/or concentration which will cause interference with the POTW.

**STORMWATER.** Any flow occurring during or immediately following any form of natural precipitation and resulting therefrom.

**SUSPENDED SOLIDS.** The total nonfilterable residue as defined in Manual of Methods for Chemical Analysis of Water and Wastes and analyzed in accordance with an approved test procedure.

**UPSET.** An exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation.

**VIOLATION.** Noncompliance with federal, state, or local pretreatment standards or requirements, any provisions pursuant to this chapter, or any requirements or conditions of an industrial discharge permit.

**WASTEWATER.** The liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, and institutions.

(B) Terms not otherwise defined herein shall be as adopted in the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the C.F.R. Title 40, Part 403.

(Ord. 165, passed 7-20-1994)

#### § 53.005 ABBREVIATIONS.

The following abbreviations shall have the designated meanings.

**ASPP.** Accidental Spill Prevention Plan or Accidental Spill Prevention Program as defined by the text it is located in.

**BMR.** Baseline monitoring report.

**BOD.** Biochemical oxygen demand.

**C.F.R.** Code of Federal Regulations.

**COD.** Chemical oxygen demand.

**EPA.** Environmental Protection Agency.

**IWSQ.** Industrial waste survey questionnaire.

**mg/L.** Milligrams per liter (i.e., parts per million).

**NPDES.** National Pollutant Discharge Elimination System.

**POTW.** Publicly owned treatment works.



**SIU.** Significant industrial user.

**TSS.** Total suspended solids.

**U.S.C.** United States Code.  
(Ord. 165, passed 7-20-1994)

### **PROHIBITIONS AND LIMITATIONS**

#### **§ 53.020 PROHIBITIONS ON WASTEWATER DISCHARGES.**

(A) (1) *General prohibitions.* A user, including but not limited to a food service establishment, may not introduce into the POTW any pollutant(s) which cause pass through or interference. These general prohibitions and the specific prohibitions in division (B) of this section apply to each user introducing pollutants into the POTW whether or not the user is subject to other national pretreatment standards or any national, state or local pretreatment requirements.

(2) *Affirmative defenses.* A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in division (A)(1) of this section and the specific prohibitions in divisions (B)(3), (B)(4), (B)(5), (B)(6), and (B)(7) of this section where the user can demonstrate that:

(a) 1. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

2. A local limit designed to prevent pass through and/or interference, as the case may be, was developed for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each local limit directly prior to and during the pass through or interference; or

(b) If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with division

(C) of this section for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(B) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into the POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to: wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 C.F.R. pt. 261.21; at no time shall 2 successive readings on an explosion hazard meter, at the point of discharge into the POTW or at any point in the POTW, be more than 5% nor any single reading over 10% of the lower explosive limit (LEL) of the meter; liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substance which the control authority, the state, or EPA has notified the user is a fire hazard or a hazard to the system;

(2) Any water or wastes having a pH lower than 6.0 or higher than 9.0 or discharges which will react with water to form products which have a pH value lower than 6.0 or greater than 9.0 or having any other corrosive property capable of causing damage or hazard to structure, equipment and personnel of the POTW. Prohibited wastes include, but are not limited to, concentrated acids, alkalis, chlorides, sulfides, and fluoride compounds or any iron pickling wastes or concentrated plating solutions whether neutralized or not;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW or other interference with the proper operation of the POTW, and at no time, any water or waste containing floatable grease, oil, fat or wax or dispersed nonfloatable grease, oil, fat or wax in amounts that inhibit or otherwise interfere with the operation of the POTW; any garbage, except domestic wastewater discharged from garbage disposal units in private dwellings, that has not been ground or comminuted to a degree that all particles float or carry freely in suspension under flow conditions normally prevalent in the POTW, and which contains particles of a size that have not been ground sufficiently to pass through a 3/8-inch screen; or other wastes including, but not limited to, bones, hair, hides or fleshings, whole blood, paunch manure, recognizable portions of the human anatomy, tissue fluids, entrails, ashes, cinders, mud, straw, sand, wood, grass clippings, spent lime, stone or marble dust, shavings, metal, glass, rags, feathers, tar, asphalt residues, glass grinding or polishing wastes, plastics, spent grains, spent hops, waste paper, styrofoam and residues from refining or processing of fuel or lubricating oil;

(4) Any pollutant, including oxygen demanding pollutants (BOD and the like) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat of a temperature in excess of 140°F at the sewer connection or of a quantity that causes the temperature at the POTW treatment plant to exceed 104°F;

(6) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity, either singly or by interaction with other pollutants, that may cause acute worker health and

safety problems, pass through or interfere with the POTW, or that exceed standards promulgated by either the EPA pursuant to § 307(a) of the Act, or the state pursuant to any applicable statutory provisions;

(8) Any trucked or hauled pollutants or sludge from septic tanks, cesspools, chemical toilets, privies, grease traps or grit traps, unless authorized by a valid disposal permit issued by the control authority and disposed of at discharge points designated by the POTW;

(9) Any substance which, either singly or by interaction with other substances, is noxious or malodorous, or is capable of creating a public nuisance or hazard to life or health, or whose concentrations prevent entry into the POTW for maintenance, repair or other reasons;

(10) Any radioactive wastes or isotopes of the half-life or concentration as may exceed limits established by federal, state or county regulations;

(11) Stormwater; surfacewater; groundwater; roof runoff; street drainage; yard drainage; water from yard fountains, ponds or lawn sprayers; subsurface drainage; uncontaminated cooling water or other waters; or unpolluted industrial process waters, either discharged by gravity or from sump pumps, except where the user is served by combined sewers and cannot discharge the water directly to a surface water course;

(12) Any waste producing excessive discoloration that may cause the water of the POTW to exceed appropriate color criteria;

(13) Any waters or wastes containing suspended solids or dissolved matter of the character and quantity that unusual attention or expense is required to handle these materials in the POTW;

(14) Any water or wastes containing algicides, fungicides, antibiotics, insecticides, strong oxidizing agents or strong reducing agents;

(15) Any wastes requiring an excessive quantity of chlorine or other chemical compound used for disinfection purposes or excessive treatment in order to meet the discharge requirements of the POTW;

(16) Any garbage or other solid material from any food processing plant, industrial plant or retail grocery store;

(17) Any discharge of water or waste which in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer than 15 minutes, 5 times the average 24-hour concentration or flow during normal operation;

(18) Any water or waste containing substances which are not amenable to treatment or which cause the POTW effluent to fail to meet the discharge requirements established by the NPDES permit or any other permit;

(19) Any substance which may cause sludge to be unsuitable for reclamation and reuse, or which may interfere with the reclamation process of the POTW, or which may preclude the POTW from selecting the most cost-effective alternative for sludge disposal or which may cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under § 405 of the Act, or any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or statutory provisions;

(20) Any water added for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with effluent criteria;

(21) Any material into a manhole through its top;

(22) Any other solid or liquid which is determined by the control authority to be or have the potential to be detrimental to the POTW;

(23) Use of soft-water regenerating units for domestic or commercial use is prohibited if the treated waters discharge to the POTW;

(24) Dissolved sulfides in excess of 0.1 milligram/liter;

(25) Any excessive amounts of chlorinated hydrocarbon or organic phosphorus type compounds;

(26) Any excessive amounts of deionized water, steam, condensate or distilled water;

(27) Any substances that may precipitate, solidify, gel, polymerize or become viscous under conditions normally found in the POTW treatment plant effluent; or

(28) Any detergents, surface active agents, or other substances, in quantities sufficient to cause excessive foaming in the POTW.  
(Ord. 165, passed 7-20-1994)

#### **§ 53.021 LIMITATIONS ON WASTEWATER DISCHARGES.**

(A) No nonresidential user shall discharge wastewater containing restricted substances into the POTW in excess of limitations specified in a valid disposal permit, an industrial discharge permit or published by the control authority. The control authority shall reserve the right to publish and periodically revise standards for specific restricted substances. These standards shall be developed in accordance with 40 C.F.R. pt. 403.5 and shall implement the objectives of this chapter. Standards published in accordance with this section will be deemed Pretreatment Standards for the purposes of § 307(d) of the Act.

(B) At its discretion, the control authority may impose mass limitations in addition to or in place of the concentration based limitations referenced above.  
(Ord. 165, passed 7-20-1994)

**§ 53.022 FEDERAL CATEGORICAL  
PRETREATMENT STANDARDS.**

(A) If the federal standard for a particular industry, pursuant to the federal categorical pretreatment standard, and/or a state standard is more stringent than the standard imposed under this chapter, then the federal and/or state standard shall apply. Affected industrial users shall comply with the appropriate standard within the stated compliance deadline.

(B) The control authority shall notify affected industrial users of the applicable reporting requirements under 40 C.F.R. pt. 403.12, but failure of the control authority to notify does not relieve the persons of the obligation to comply with the reporting requirements.

(Ord. 165, passed 7-20-1994)

**§ 53.023 FEDERAL AND STATE  
REQUIREMENTS.**

Federal or state requirements and limitations on discharges shall apply in any case where they are more stringent than limitations contained in this chapter.

(Ord. 165, passed 7-20-1994)

**§ 53.024 INDUSTRIAL DISCHARGE PERMIT  
REQUIREMENTS.**

Industrial discharge permit requirements shall apply in any case where they are more stringent than limitations contained in this chapter.

(Ord. 165, passed 7-20-1994)

**§ 53.025 DILUTION.**

No industrial user shall in any way dilute a discharge to achieve compliance with federal categorical pretreatment standards, state limitations or any other pollutant-specific limitation contained in this chapter or a permit.

(Ord. 165, passed 7-20-1994)

**§ 53.026 PREMISES.**

No person shall suffer or permit any premises belonging to or occupied by him or her or under his or her control, located in the jurisdiction covered by this chapter, or any cellar, vault, privy, cesspool, sewer or private drain thereon or therein, to become nauseous, foul or offensive or prejudicial to the public health or public comfort.

(Ord. 165, passed 7-20-1994)

**§ 53.027 SEPARATION OF STORM DRAINAGE  
AND WASTEWATER.**

No person, firm, or corporation shall allow or permit any wastewater of any kind from his or her premises to enter any of the storm drains of the jurisdiction covered by this chapter, whether by surface drainage, pipes or other means, nor shall storm drainage, that is, runoff from precipitation be permitted to enter into the POTW.

(Ord. 165, passed 7-20-1994)

**§ 53.028 INTERFERENCE WITH FACILITIES.**

(A) No unauthorized person shall enter any village sewer, manhole, pumping station, treatment plant or appurtenant facility. No person shall maliciously, willfully or negligently break, damage, destroy, deface or tamper with any structure, appurtenance or equipment which is part of the village sewerage system.

(B) No person, other than an authorized employee or the agent of the village, shall operate or change the operation of any village sewer, pumping station, treatment plant, outfall structure or appurtenant facility.

(Ord. 165, passed 7-20-1994)

**CONTROL OF PROHIBITED WASTES****§ 53.040 REGULATORY ACTIONS.**

If wastewaters containing any prohibited substance exceeding prescribed limits or violating restrictions imposed by §§ 53.020 *et seq.* of this chapter are discharged or proposed to be discharged into the POTW, the control authority may take any of the following actions necessary to protect the POTW:

(A) Prohibit the discharge of the wastewater;

(B) Require the discharger to demonstrate that in-plant modifications will bring the discharge into conformance with this chapter;

(C) Require pretreatment including, but not limited to, storage facilities or flow equalization necessary to ensure compliance with this chapter;

(D) Require the discharger to within 24 hours of the exceedance and/or violation, provide the control authority with additional information regarding the discharge as may be required by the control authority, including, but not limited, to requested laboratory analysis results;

(E) Require the discharger to pay all additional costs of damage incurred by the control authority as a result of the excess loads, including, but not limited to, all incidental and consequential damages and reasonable attorneys' fees proximately caused by the excess load and any fines or penalties assessed against the POTW for violation of NPDES or other permits;

(F) Assess civil penalties, seek injunctive relief and petition for criminal prosecution pursuant to applicable statutory provisions; and

(G) Take any other remedial action including, but not limited to, suspension or discontinuation of service as may be deemed to be necessary to achieve the purpose of this chapter.  
(Ord. 165, passed 7-20-1994)

**§ 53.041 ACCIDENTAL DISCHARGES.**

(A) (1) Each user shall provide protection against accidental discharge of prohibited materials or other wastes regulated by this chapter. Users shall provide and maintain at their expense protective facilities such as, but not limited to, retention basins, dikes, storage tanks or other devices designated to eliminate, neutralize, offset or otherwise negate the effects of prohibited materials or waste discharges in violation of this chapter. Prior to construction, or otherwise as required by the control authority, the user shall submit to the control authority for approval detailed plans of the protective facilities or equipment and operating procedures.

(2) All significant industrial users and other users, as required by the control authority, shall submit an accidental spill prevention plan. At a minimum, this plan shall include the following elements:

(a) Description of discharge practices, including nonroutine batch discharges;

(b) Description of stored chemicals;

(c) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under §§ 53.020 *et seq.* of this chapter, with procedures for follow-up written notification within 5 days;

(d) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency responses; and

(e) Other information as required by the control authority.

(3) Review and approval of the plans and operating procedures by the control authority shall not relieve the user from the responsibility to modify the facility as necessary to meet the requirements of the chapter or a permit.

(B) (1) The user shall cause to be furnished and permanently posted on the user's bulletin board(s) or other prominent places notices advising employees whom to call in case of an accidental discharge.

(2) The user shall immediately notify the control authority upon the accidental discharge of wastes to the POTW so that countermeasures may be taken to minimize damage to the environment, the POTW, the POTW treatment processes and the receiving waters. The notification shall include the location of the discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. This notification shall be followed, within 5 days of the date of occurrence, by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrence.

(3) The notification will not relieve the user of liability for any fines provided for in this or any chapter, or for any expense, loss or damage to the environment, the POTW or the POTW treatment processes, or for any fines imposed on the control authority on account thereof.  
(Ord. 165, passed 7-20-1994)

#### § 53.042 UPSET.

(A) An industrial user experiencing an upset shall submit the following information to the POTW and the control authority as soon as possible and no later than 24 hours of becoming aware of the upset:

(1) A description of the indirect discharge and cause of noncompliance;

(2) The period of noncompliance, including exact dates and times or, of not corrected, the anticipated time the noncompliance is expected to continue;

(3) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance; and

(4) Other information as required by the control authority.

(B) In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.  
(Ord. 165, passed 7-20-1994)

#### § 53.043 BYPASS.

(A) An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation, if the industrial user submits prior notice to the control authority at least 10 days before the date of the bypass, if the control authority considers its adverse effects and determines that it will meet the 3 conditions listed in division (B)(1), (2) and (3), and if the control authority approves the anticipated bypass.

(B) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

(2) There was no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; or

(3) The industrial user submitted notices as required under division (A) of this section.

(C) (1) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass.

(2) A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain, at a minimum:

(a) A description of the bypass and its cause;

(b) The duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue;

(c) Steps taken or planned to reduce, eliminate and prevent recurrence of the bypass; and

(d) Other information as required by the control authority.  
(Ord. 165, passed 7-20-1994)

**§ 53.044 HAZARDOUS WASTE DISCHARGE.**

(A) A user shall notify the POTW and the control authority, the U.S. EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261 or § 3001 of the Resource Conservation and Recovery Act, being 42 U.S.C. §§ 6901 *et seq.* The notification must include, at a minimum:

(1) The name of the hazardous waste as set forth in 40 C.F.R. pt. 261;

(2) The U.S. EPA hazardous waste number;

(3) The type of discharge (continuous, batch or other); and

(4) The following information to the extent the information is known and readily available to the industrial user:

(a) Identification of the hazardous constituents contained in the wastes; and

(b) An estimation of the mass and concentration of the constituents in the wastestream discharged.

(B) For the purposes of notification under this section, the user must contact, at a minimum, the following:

- (1) Public Works Director  
Village of Milan, New Mexico
- (2) Industrial Pretreatment Coordinator  
City of Grants Wastewater Treatment Facility  
1900 East Old Highway 66  
Grants, New Mexico 87020
- (3) Director, Hazardous Waste Management Division Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202
- (4) Chief, Groundwater and Hazardous Waste Bureau Environmental Improvement Division  
New Mexico Health and Environment Dept.  
P.O. Box 968  
Santa Fe, New Mexico 87504-0968

(Ord. 165, passed 7-20-1994)

**§ 53.045 OTHER UNANTICIPATED DISCHARGES.**

All users shall notify the POTW and the control authority immediately of any discharge that could cause problems to the POTW, including any slug loading.

(Ord. 165, passed 7-20-1994)

**§ 53.046 INDUSTRIAL USER CONTROL OF DISCHARGES.**

(A) Each industrial user shall take all reasonable steps to minimize or prevent any discharge in violation of a permit which has a reasonable likelihood of adversely affecting human health, the environment, the POTW or the receiving waters of the POTW. Reasonable steps include but are not limited to accelerated or additional monitoring necessary to determine the nature and impact of the noncomplying discharge.

(B) The industrial user shall control production or all discharges to the extent necessary to maintain compliance with pretreatment standards and requirements upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.  
(Ord. 165, passed 7-20-1994)

**§ 53.047 FOOD SERVICE ESTABLISHMENT CONTROL OF DISCHARGES.**

(A) Food service establishments shall install, operate, clean and maintain a sufficiently sized oil and grease, water and solids separator (herein called grease trap) necessary to achieve compliance with requirements set forth under this chapter.

(B) All grease traps shall have a capacity of 15 gallons per seat, except that no grease trap shall be smaller than 750 gallons. No single separator shall be larger than 3,000 gallons. If requirements exceed 3,000 gallons, then multiple smaller units shall be used. In cases of certain fast food restaurants or establishments with the potential to discharge large quantities of oils, grease, solids or wastewaters, larger grease trap capacities may be required. Prepackaged or manufactured grease traps may be approved by the control authority with proper engineering and application review.

(C) The use of any additive, such as enzymes, chemicals or bacteria, must be approved in writing by the control authority.

(D) All grease traps shall be maintained by the user at the user's expense. Maintenance shall include the complete removal of all contents including floating materials, wastewater, and bottom sludges and solids. Decanting or discharging of removed waste back into the trap from which the waste was removed or any other grease trap, for the purpose of reducing the volume to be hauled is prohibited.

(E) All grease traps must be pumped out completely once every 3 months, or more frequently, as required by the control authority.

(F) All pumpage from grease traps must be disposed of at an approved location.

(G) All pumpage from grease traps must be tracked by a manifest which confirms pumping, hauling and disposal of waste. This manifest shall contain the following information, at a minimum:

(1) *Generator information.*

- (a) Name and address;
- (b) Volume pumped;
- (c) Date and time pumped; and
- (d) Signature of generator verifying information.

(2) *Transporter information.*

- (a) Company name and address; and
- (b) Driver name and signature verifying information; and

(3) *Receiving facility information.*

- (a) Facility name and address;
- (b) Date and time of receiving;



(c) Name of agency authorizing receipt of wastes to this facility; and

(d) Signature verifying receipt of waste.

(Ord. 165, passed 7-20-1994)

### **ADMINISTRATION**

#### **§ 53.060 DISCHARGE TO THE POTW.**

It shall be unlawful for any person to discharge directly or indirectly into the POTW without having satisfied all applicable terms and conditions of this chapter and that person will be subject to enforcement action(s) including monetary penalties.

(Ord. 165, passed 7-20-1994)

#### **§ 53.061 INDUSTRIAL WASTE SURVEY QUESTIONNAIRE.**

(A) All industrial users proposing to connect to or discharge wastewater into the POTW shall complete and file with the control authority, at least 180 days prior to connecting to the POTW, an industrial waste survey questionnaire (IWSQ).

(B) Each existing industrial user shall file an IWSQ within 90 days after the effective date of this chapter and periodically as required by the control authority.

(C) All IWSQs shall be signed by an authorized signatory of the user.

(Ord. 165, passed 7-20-1994)

#### **§ 53.062 INDUSTRIAL DISCHARGE PERMITS.**

(A) If a determination is made, following review of the IWSQ for a user, that the user is a significant industrial user, or if there is other cause, the user shall provide any further information, including a baseline monitoring report, and payment of any applicable fees that may be required by the control authority and shall

obtain an industrial discharge permit (permit). This permit shall be in addition to all others permits required by the village or other local agencies. The application form and required information for the permit shall be at the discretion of the control authority.

(B) The control authority shall evaluate the application and either approve and issue the permit, deny the permit or require the submission of additional information. Notice of denial of completed applications shall be made expeditiously. Approvals may be subject to certain requirements, the failure of which may result in revocation of the permit.

(C) A permit shall be expressly subject to all provisions and conditions of this chapter and all other rules, regulations, user charges and fees which are in effect or which may be established by the control authority. A permit issued by the control authority under this chapter shall require the permittee, at a minimum:

(1) To achieve effluent limitations based upon standards and requirements established pursuant to any and all applicable federal, state or local regulations including this chapter, together with further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, area wide plans adopted pursuant to law or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To ensure that all discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit a written request for revision of the permit prior to any contemplated facility expansion, process modification or changes in production that would result in new or increased discharges or, if these would not violate effluent

limitations or other restrictions specified in the permit, to notify the control authority of the new or increased discharges;

(5) To install, use and maintain monitoring equipment, to sample in accordance with methods, to maintain and retain the records of information from monitoring activities for a minimum of 3 years, and to submit to the control authority reports of monitoring results, as may be stipulated in the permit, or required by the control authority. Users shall report their monitoring results to the control authority as required by the permit unless otherwise required by the control authority. Users shall identify the authorized signatory, as defined in this chapter, and discharge monitoring reports shall be signed by the authorized signatory of the industrial user. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within 7 days of his or her return, amendments to the monitoring report to which he or she was not a signatory; and

(6) At all times, to maintain in good working order and operate as effectively as possible, all facilities or systems of control installed to achieve compliance with the terms and conditions of the permit.

(D) Permits shall be issued for a specified time period, but in no case more than 5 years. The permittee shall submit information, forms and fees as are required by the control authority for renewal no later than 180 days prior to the date of expiration. If the permittee is not notified of reissuance or denial of the permit by the control authority 30 days prior to the expiration of the permit, the permit shall be extended until the time as the control authority reissues or denies a new permit.

(E) A permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation.

(F) Any permittee who violates any conditions of the permit, this chapter or any applicable federal, state or local regulation is subject to revocation of the permit.

(G) No permit may be issued, modified or renewed by the control authority until the applicant, or permittee, as the case may be, has paid all fees, penalties or fines due and owing, or has entered into an agreement with the control authority establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permittee shall satisfy the provisions of this section by posting financial security as required pursuant to applicable statutory provisions.

(H) The control authority may revise a permit or conditions of a permit in order to meet the changing needs of the POTW or the user or to meet the requirements of new or revised regulations. If additional pretreatment and/or operations and maintenance will be required to meet the requirements of the revised permit, the user shall develop and submit a compliance schedule. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical and noncategorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction and the like). No increment shall exceed 9 months and the total length of the compliance schedule shall not exceed 18 months. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between the progress reports to the control authority.  
(Ord. 165, passed 7-20-1994)

**§ 53.063 LIQUID WASTE HAULERS.**

It shall be unlawful for any person to discharge holding tank waste without first obtaining the written approval of the control authority. Each liquid waste hauler shall obtain an industrial discharge permit, discharge only at the point designated by the control authority and comply with all the provisions of this chapter, the permit and all applicable federal, state or local regulations.

(Ord. 165, passed 7-20-1994)

**§ 53.064 MONITORING AND REPORTING.**

(A) (1) Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing industrial users subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the following information, at a minimum:

(a) The name and address of the facility including the name of the operator and owners;

(b) A list of any environmental control permits held by or for the facility;

(c) A brief description of the nature, average rate of production, and standard industrial classification of the operation(s) carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;

(d) Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

1. Regulated process streams;

and

2. Other streams as necessary to allow use of the combined wastestream formula of § 403.6(e).

(e) The pretreatment standards applicable to each regulated process;

(f) The results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. The sample shall be representative of daily operations; and

(g) Other information as required by the control authority.

(2) All significant industrial users, and any other users required by the control authority, shall submit a baseline monitoring report containing the above information as a requirement of application for a permit to discharge to the POTW.

(B) Within 90 days following the date for final compliance with applicable pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a compliance status report.

(C) Each industrial user shall complete monitoring and submit monitoring reports to the control authority as required by the chapter, the program and the permit. If during any reporting period, an industrial user fails to comply with permit requirements and limitations, the industrial user shall include in the report an explanation of the noncompliance, any known or suspected causes and actions taken or to be taken to prevent further occurrences.

(D) If an industrial user monitors any pollutant more frequently than required by the control authority, using approved procedures, the results of this monitoring shall be included in the report.

(E) All sampling, analyses and flow measurements shall be performed by a state certified independent laboratory or by a laboratory approved by the control authority. Monitoring and analysis shall be conducted according to methods approved under 40 C.F.R. Part 136, unless other test procedures have been specified by the control authority.

(F) All users shall furnish to the control authority, upon request, any information which may be requested to determine if cause exists for modifying, revoking or reissuing the permit or to determine compliance with this chapter, the program or the permit.

(G) All users shall provide any and all information to the control authority that may be required to determine the characteristics or nature of the potential discharge.

(H) If monitoring and/or analysis is performed by the control authority in lieu of the user performing it, the user may be charged and shall be required to pay any fees imposed by the control authority. (Ord. 165, passed 7-20-1994)

#### § 53.065 NOTIFICATION.

(A) All users shall promptly notify the POTW or the control authority in advance of any substantial change in the volume or character of pollutants in their discharge. For the purposes of this requirement, substantial change shall mean that which could cause the industrial user to violate this chapter or a permit.

(B) All users shall notify the control authority as soon as possible but at least 30 days prior to any planned changes in the permitted facility or activity.

(C) A user shall notify the control authority of any discharge that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, as soon as the user becomes aware of the occurrence.

(D) If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the

violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if the control authority determines, as a result of sampling the industrial user, that additional monitoring is unnecessary.

(E) All users shall comply with the notification requirements of §§ 53.040 *et seq.* of this chapter. (Ord. 165, passed 7-20-1994)

#### § 53.066 RECORD KEEPING.

(A) Any industrial user subject to the reporting requirements required by this chapter, the program or a permit shall be required to retain for a minimum of 3 years from the date of the sample, measurement, report or application any records of monitoring activities and results (whether or not the monitoring activities are required by this section) and shall make the records available for inspection and copying by the POTW. Records include all calibration and maintenance records, copies of all reports required by this chapter, the program or a permit, and records of all data used to complete the application for the permit. This period may be extended by request of the control authority at any time.

(B) This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

(C) The following information, at a minimum, is required for all samples:

(1) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(2) The dates analyses were performed;

(3) Who performed the analyses;

(4) The analytical techniques/methods used;

and

(5) The results of the analyses.

(D) The reports and other documents required to be submitted or maintained under this chapter, the program or a permit shall be subject to the provisions of 18 U.S.C. § 1001 relating to fraud and false statements; the provisions of § 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and the provisions of § 309(c)(6) regarding responsible corporate officers which provide for civil and/or criminal penalties for making any false statement, record, report, plan or other document. (Ord. 165, passed 7-20-1994)

#### **§ 53.067 ADMISSION TO PROPERTY FOR INSPECTION, SAMPLING AND ANALYSIS.**

All users shall allow any authorized representative of the control authority bearing proper credentials to enter upon the premises of any facility without delay where a real or potential discharge is located or records are required to be kept under the terms and conditions of this chapter or a permit, at reasonable times to have access to and copy records required to be kept under the terms and conditions of this chapter or a permit, to inspect any facility or monitoring equipment, to observe monitoring or testing practices or facility treatment or operations, and/or for measuring, sampling or testing of any discharge of wastewater to the POTW in order to determine compliance with the requirements of this chapter, a permit, and/or any federal, state or local regulations. (Ord. 165, passed 7-20-1994)

#### **§ 53.068 CONFIDENTIAL INFORMATION AND PUBLIC ACCESS.**

(A) Except as otherwise provided in 40 C.F.R. pt. 2.302, any records, reports or other information obtained pursuant to this chapter, the program or a permit, including any correspondence relating thereto, shall be available to the public; however, upon a showing satisfactory to the control authority by any person that the making public of any report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the control

authority shall consider the record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of federal or state agencies or the control authority.

(B) The control authority shall serve upon the furnisher of confidential information verbal notice of the intent to disclose the information prior to disclosure and written notice of the disclosure of the information and the person which properly requested the information. The control authority shall submit the claim of confidentiality with the information to the requesting person.

(C) Information provided by users or the control authority pursuant to this chapter and the program, that has not been classified as confidential, are open for public inspection. Requests for the review are to be made in writing and an appointment for review may be required. (Ord. 165, passed 7-20-1994)

### ***ENFORCEMENT PROCEDURES***

#### **§ 53.080 NOTICE OF VIOLATION.**

A notice of violation will be issued in writing by the control authority to any user for failure to meet any pretreatment standards or requirements pursuant to federal, state or local regulations, this chapter or a permit. (Ord. 165, passed 7-20-1994)

#### **§ 53.081 SUSPENSION OF SERVICE.**

(A) The control authority may suspend immediately, after informal notification, and indefinitely the wastewater treatment service when in the opinion of the control authority the suspension is necessary in order to halt an actual or threatened discharge or other activity which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment or the POTW as authorized by 40 C.F.R. pt. 403.8(0)(1)(vi).

(B) The control authority may suspend the wastewater treatment service when in the opinion of the control authority the discharge may cause interference to the POTW, may cause the control authority to violate any condition of its NPDES permit, or when the user has failed to comply with any of the requirements of this chapter or the program or any conditions of the permit. In any of these events, the control authority will provide 30-days' written notice served in person or by registered or certified mail to the user of the intent to suspend service. If served by mail, the notice shall be sent to the last address known to the control authority. Where the address is unknown, service may be made upon the owner of record of the property involved. Notice shall be deemed to have been given at the time of deposit, postage prepaid, in a facility serviced by the United States Postal Service. If the user does not respond to this notice by abatement of the noncompliance or voluntary suspension of discharge within the 30 days, the control authority will immediately suspend the service. Service will not be restored to the user until abatement of the noncompliance has been achieved by the user and verified by the control authority. Any costs incurred by the control authority in suspending or restoring the service will be billed to and recoverable from the user.

(C) Any person notified of a suspension of the wastewater treatment service and/or the permit shall immediately stop or eliminate its discharge. In the event of a failure to voluntarily comply with the suspension order, the control authority may take steps as are deemed necessary including, but not limited to, immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals.

(D) The control authority shall reinstate the wastewater treatment service and/or permit upon proof of the elimination of the noncomplying discharge and payment of any damages to the POTW or of any fines or penalties assessed against the POTW for violation of its NPDES permit or payment of any fines or penalties assessed against the user for the noncompliance. A detailed written statement

submitted by the user describing the causes of the harmful contribution and the measures taken to prevent future occurrence shall be submitted to the control authority within 5 days of the date of occurrence.

(Ord. 165, passed 7-20-1994)

#### § 53.082 REVOCATION OF PERMIT.

(A) In addition to suspension of service as provided in § 53.081, any user who commits any of the following violations is subject to having a permit revoked in accordance to circumstances and conditions established by the approved enforcement response plan for the control authority:

- (1) Missed interim or final compliance schedule date;
- (2) Failure to report or notify completely or accurately;
- (3) Late to report or notify;
- (4) Failure to report;
- (5) Failure to install manholes or monitoring equipment;
- (6) Failure to sample, monitor or analyze as required;
- (7) Failure to develop an accidental spill prevention plan;
- (8) Refusal of reasonable or timely access to premises for inspection or monitoring;
- (9) Slug discharge, whether harmful or not;
- (10) Reporting false information;
- (11) Exceeding discharge limitation or prohibition; or
- (12) Falsifying, tampering with or rendering inaccurate any required monitoring device or method.

(B) Any user meeting the conditions of the approved enforcement response plan that call for a show cause hearing shall, in an informal hearing, show cause why the permit should not be revoked. At this hearing, the discharger may appear personally or through counsel. The control authority will provide 30-days' written notice served in person or by registered or certified mail to the user of the date of the show cause hearing. If served by mail, the notice shall be sent to the last address known to the control authority. Where the address is unknown, service may be made upon the owner of record of the property involved. Notice shall be deemed to have been given at the time of deposit, postage prepaid, in a facility serviced by the United States Postal Service. No later than 7 days following the informal hearing, the user will be notified of the decision.

(C) The control authority shall immediately, following informal notice to the user and without a show cause hearing, revoke a permit where a user meets the conditions of the approved enforcement response plan that call for revocation of the permit.

(D) Any user notified of revocation of the permit shall immediately cease and desist its discharge. In the event of a failure to voluntarily comply with the cease and desist order, the control authority shall take steps as are deemed necessary including, but not limited to, immediate severance of the sewer connection.

(E) Any user that has a permit revoked and desires to discharge to the POTW shall reapply for a permit and shall meet all of the requirements of this chapter including, but not limited to, payment of all application and reconnection fees, costs incurred by the control authority in revoking the permit and blocking or disconnecting the user's discharge from the POTW, delinquent fees, charges and penalties and any other sums as the user may owe to the control authority or other local agencies.  
(Ord. 165, passed 7-20-1994)

### § 53.083 LEGAL ACTIONS.

(A) Any user who commits any of the following violations is subject to legal action, in accordance to circumstances and conditions established by the approved enforcement response plan for the control authority, including, but not limited to, administrative order(s) to achieve compliance, a minimum penalty of \$1,000 per day for each offense up to a maximum penalty of \$50,000 per day for each offense, and judicial action:

- (1) Missed interim or final compliance schedule date;
- (2) Failure to report or notify completely or accurately;
- (3) Late to report or notify;
- (4) Failure to report;
- (5) Failure to install manholes or monitoring equipment as required;
- (6) Failure to sample, monitor or analyze as required;
- (7) Failure to develop an accidental spill prevention plan;
- (8) Failure to implement an accidental spill prevention plan;
- (9) Refusal of reasonable or timely access to premises for inspection or monitoring;
- (10) Slug discharge, whether harmful or not;
- (11) Reporting false information;
- (12) Exceeding discharge limitation or prohibition;
- (13) Falsifying, tampering with or rendering inaccurate any required monitoring device or method;

(14) Failure to comply with conditions of this chapter or a permit; or

(15) Discharge without a permit or approval of the control authority.

(B) Violators of offenses resulting in or exacerbating violations of POTW NPDES, air, or other federal or state permit, consent order or judgment is subject to a penalty by the POTW for each offense plus damages including, but not limited to, legal fees and recovery of any penalties paid by the POTW.

(C) Monetary penalties shall be used by the control authority solely for implementation of the program.

(D) The control authority may institute a civil action in the superior court of the state or other court of competent jurisdiction for injunctive relief to prohibit and prevent any violation of this chapter, any pretreatment standard or any regulations promulgated thereunder.  
(Ord. 165, passed 7-20-1994)

#### **§ 53.084 PUBLIC NOTICE.**

Any user who commits any of the following violations is subject to public notice, in accordance with requirements of 40 C.F.R. pt. 403.8 and circumstances and conditions established by the approved enforcement response plan for the control authority:

(A) Failure to meet, within 90 days, scheduled date on a compliance schedule for starting or completion of construction;

(B) Missed a final compliance schedule date, for any reason, by 90 days;

(C) Failure to accurately report noncompliance;

(D) Any discharge that is harmful, as defined in enforcement response plan;

(E) Reported false information;

(F) Failure to report within 30 days of the due date;

(G) Significant noncompliance:

(1) Sixty-six percent or more of all measurements in a 6-month period exceed the daily maximum or average, for the same parameter; or

(2) Thirty-three percent or more of all measurements in a 6-month period equal or exceed the product of the daily maximum or average multiplied by 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all others except pH; or

(H) Discharge without permit or approval.  
(Ord. 165, passed 7-20-1994)

#### **§ 53.085 COSTS OF ABATEMENT.**

All costs of abatement of any and all violations by any user shall be borne by the user.  
(Ord. 165, passed 7-20-1994)

### ***CONSTRUCTION AND FACILITIES***

#### **§ 53.100 CONSTRUCTION OF FACILITIES.**

(A) (1) All design of sewers, connections to sewers, pretreatment facilities and appurtenances which are directly or indirectly connected to the POTW shall be designed in accordance with all state laws, local ordinances and regulations, and with generally accepted engineering practice. Any works to be constructed within a public right-of-way shall be designed by an engineer licensed to practice in the State of New Mexico. Any works on private projects connected to the POTW may require design by an engineer licensed to practice in the State of New Mexico, when, in the opinion of the engineer representing the village, the complexity of the system requires professional knowledge.



(2) No person shall construct a building sewer, or a lateral sewer, or make any connection with any public sewer without first obtaining a written permit from the village and paying all fees and complying with all requirements and conditions required by regulations to be adopted under this and other ordinances by the village and in accordance with all applicable federal, state and local rules and regulations.

(B) (1) A wastewater pretreatment system or device may be required to treat flows prior to discharge to the POTW of certain waste constituents not in compliance with this chapter, the program, or a permit, in order to distribute more equally over a longer time period any peak discharges of wastewater, or to meet effluent limits required by this chapter, the program, or a permit. All pretreatment systems or devices shall be approved by the control authority but the approval shall not relieve the user of the responsibility of meeting any requirement of this chapter, the program or a permit.

(2) All domestic or sanitary wastewaters from rest rooms, showers, drinking fountains, and the like, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through any required pretreatment system or device.

(C) (1) All users shall be required to install, use and maintain monitoring equipment or methods as may be required to carry out the objective of the Act including but not limited to suitable manhole(s), meters and appurtenances or other facilities to facilitate observation, sampling, and measurement of the combined wastes from the premises. All monitoring equipment and facilities shall be installed by the user at his or her expense and shall be maintained by him or her so as to be safe, operable and accessible at all times. All manholes installed to meet the requirements of this section shall be located off the industrial premises or if within the plant fence, a special locked gate adjacent to the manhole and at a location approved by the control authority shall be provided, with keys to the gate lock given to the

control authority. Unrestricted access to this manhole or other meters, appurtenances or other monitoring facilities shall be available to authorized personnel of the village and the control authority at all times. The control manhole may be used as a junction manhole for domestic sewage and industrial wastes provided the junction occurs downstream of the sampling or flow measuring point.

(2) All significant industrial users and any other users as required by the control authority shall furnish and install at the control manhole or other appropriate location a calibrated flume, weir, flow meter, or similar device approved by the control authority and suitable to measure the flow rate and total volume of the combined wastestream or other discharge. A flow indicating, recording and totalizing register may be required by the control authority.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the control authority, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, and other harmful materials; except that the interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the control authority and located so as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gas-tight and water-tight. All grease, oil and sand interceptors deemed necessary shall be installed and maintained at the owner's expense and shall be in continuously efficient operation at all times.

(D) All monitoring facilities, whether on public or private property, shall be constructed in accordance with applicable state and local construction standards and specifications. Plans and specifications for all the work shall be submitted, prior to construction, to the control authority for approval as conforming to requirements of the program and this or other ordinances.

(E) All users shall obtain approval from the control authority prior to construction, installation, modification, or operation of any facility for the collection, treatment or discharge of any pollutant into the POTW.

(F) All users shall comply with § 53.041(A) in the construction of facilities or equipment for the prevention of accidental discharges.  
(Ord. 165, passed 7-20-1994)

### ***FEES***

#### **§ 53.115 PURPOSE AND POLICY.**

This subchapter authorizes the establishment of charges and fees and recovery of costs incurred for activities covered by this chapter and/or the program and chargeable to persons who discharge to the POTW.  
(Ord. 165, passed 7-20-1994)

#### **§ 53.116 CHARGES AND FEES.**

(A) The control authority may establish reasonable charges and fees which may include, at a minimum:

- (1) Fees for reviewing accidental discharge procedures and construction;
- (2) Fees for permit applications, modifications or renewals;
- (3) Fees for treatment of extra-strength pollutants;
- (4) Fees for inspection, monitoring and/or analysis of a discharge;
- (5) Fees for filing appeals; and
- (6) Other fees as the control authority may deem necessary to carry out the requirements of this chapter.

(B) These charges and fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the village. These fees shall be established by resolution of the village.  
(Ord. 165, passed 7-20-1994)

#### **§ 53.117 RECOVERY OF COSTS.**

(A) For each and every occurrence of any impact to the environment, the POTW collection system, treatment facilities or other appurtenances, or the receiving waters caused by a discharge, and notwithstanding any fines, penalties and/or surcharges that may be applicable to the discharge, the control authority may recover the direct and indirect costs associated with the clean up, repair, recovery or any other activity required directly or indirectly due to the impact of the discharge.

(B) The costs shall include but not be limited to:

- (1) The actual direct and indirect costs of any labor required to monitor, test, repair, clean up, pick up, pump, vacuum, sweep, or in any other way recover from the discharge and return the affected facility(ies) to the conditions required by permit;
- (2) The actual direct and indirect costs of any outside services billed to the authority and/or its representatives for any services, monitoring, testing, repairs, clean up, pumping, recording, containment, work or other activity engaged in to directly or indirectly assist the control authority in returning the affected facility(ies) to the conditions required by permit;
- (3) The actual direct and indirect costs of any materials, supplies, parts, and/or equipment used by the control authority and/or its representatives for any services, monitoring, testing, repairs, clean up, pumping, recording, containment, work or other activity engaged in to directly or indirectly assist the control authority in returning the affected facility(ies) to the conditions required by the permit;
- (4) The actual direct and indirect costs of any services related to the discharge provided to the control authority by any public agency;

(5) The actual amount of any and all legal fees incurred by the control authority in defending against fines, penalties, administrative fees, judgements and/or settlements against the user or its representatives resulting directly or indirectly from the discharge;

(6) The actual amount of any and all legal fees incurred by the control authority in collecting any and all fines, penalties, administrative fees, judgements and/or settlements against the user or its representatives resulting directly or indirectly from the discharge; or

(7) The actual amount of any fines, penalties, administrative fees, judgements and/or settlements against the control authority or its representatives resulting directly or indirectly from the discharge whether imposed, adjudicated, negotiated or required by any legal means.

(C) The costs shall be calculated by the control authority from the records, reports, documents and/or invoices submitted by the contractors, vendors, suppliers, agencies and/or claimants and verified by legal counsel to the control authority. The user shall be invoiced for these costs as they are developed and submitted and payment is due net 10 days, with the control authority receiving interest at the maximum acceptable rate per month on the unpaid balance. (Ord. 165, passed 7-20-1994)

***DUTY TO COMPLY; USERS  
OUTSIDE JURISDICTION***

**§ 53.130 DUTY TO COMPLY.**

(A) All users shall comply with applicable pretreatment standards and requirements.

(B) All users shall comply with the discharge prohibitions and limitations established in §§ 53.020 *et seq.* of this chapter.

(C) All users shall comply with requirements of §§ 204(b) and 405 of the Clean Water Act and subtitles C and D of the Resource Conservation and Recovery Act.

(D) Lack of an issued discharge permit does not relieve a user of the duty to comply with federal, state or local regulations including, but not limited to, this chapter.

(E) A user that has been issued a permit by the control authority has the duty to comply with the requirements and conditions of the permit and the regulations.

(F) A user that has been issued a permit by the control authority is not relieved of standards and requirements placed on it by other agencies or authorities.

(G) All users shall comply with any requirements regarding the generation, treatment, storage, and/or disposal of solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters.

(H) All users shall comply with any requirements regarding the generation, treatment, storage, and/or disposal of hazardous wastes as defined under the Resource Conservation and Recovery Act and statutory provisions and regulations relative to refuse, liquid and/or solid waste.

(I) All users shall comply with requirements of federal, state and local regulations affecting this program or be subject to enforcement actions. The most stringent of these requirements will apply. (Ord. 165, passed 7-20-1994)

**§ 53.131 USERS OUTSIDE JURISDICTION OF VILLAGE OF MILAN.**

(A) All industrial users outside the jurisdiction of the village proposing to connect to or discharge wastewater into the POTW shall complete and file with the control authority, at least 180 days prior to connecting to the POTW, an industrial waste survey questionnaire (IWSQ). Each existing industrial user

shall file an IWSQ within 90 days after the effective date of this chapter and periodically as required by the control authority. All IWSQs shall be signed by an authorized signatory of the user.

(B) All industrial users outside the jurisdiction of the village discharging or desiring to discharge to the POTW through the Village of Milan wastewater collection system shall pay all applicable fees and charges determined by the village and the control authority and shall comply with the requirements of this chapter, the program and any permits issued by the control authority or be subject to enforcement actions.

(Ord. 165, passed 7-20-1994)

**TITLE VII: TRAFFIC CODE**

Chapter

**70. TRAFFIC CODE**

**71. TRAFFIC SCHEDULES**



## CHAPTER 70: TRAFFIC CODE

### Section

- 70.01 Adoption of the New Mexico Uniform Traffic Ordinance
- 70.02 Mobile communication device use prohibition

### § 70.01 ADOPTION OF THE NEW MEXICO UNIFORM TRAFFIC ORDINANCE.

The 2010 Compilation of the New Mexico Uniform Traffic Ordinance, comprising §§ 12-1-1 through 12-13-6 inclusive, and all changes through July 1, 2010, are herewith adopted by reference, pursuant to NMSA § 3-17-6, 1978.

(Ord. 203, passed 8-19-2004; Am. Ord. 208, passed 9-22-2005; Am. Ord. 212, passed 6-15-2006; Am. Ord. 227, passed 9-17-2009; Am. Ord. 218, passed 9-20-2007; Am. Ord. 220, passed 5-15-2008; Am. Ord. 226, passed 4-15-2010; Am. Ord. 229, passed 7-15-2010; Am. Ord. 236, passed 8-18-2011; Am. Ord. 240, passed 5-17-2012; Am. Ord. 244, passed 10-17-2013; Am. Ord. 249, passed 8-21-2014)

### § 70.02 MOBILE COMMUNICATION DEVICE USE PROHIBITION.

(A) No person shall use a mobile communication device while operating a motor vehicle except:

(1) By law enforcement or emergency response personnel while in the performance of his or her official duties;

(2) While a vehicle is lawfully parked; or

(3) During an emergency.

(B) As used in this section:

(1) "Emergency" means a situation in which a person:

(a) Reports to law enforcement when a person has a reasonable belief to fear for that person's or another person's life or safety or believes that a criminal act may be perpetrated against that person or another person; or

(b) Reports to law enforcement a fire, a traffic accident in which one or more injuries are apparent, a serious road hazard, a medical or hazardous materials emergency or a person who is driving in a reckless, careless or otherwise unsafe manner.

(2) "Mobile communication device" means a cellular telephone or other device that enables a person to transmit to and receive signals from another person or from a similar device or telephone or from or to an internet site.

(3) "Use" shall include placing or dialing a voice call, talking on a mobile communication device, receiving and listening to a voice call, creating, sending or viewing a text message, or using such a device for data entry, data retrieval, communication or accessing an internet site or service.

(C) The penalty assessment for this violation will be \$50.

(Ord. 238, passed - -)





**CHAPTER 71: TRAFFIC SCHEDULES**

Schedule

- I. Speed regulation for established school zones

**SCHEDULE I: SPEED REGULATION FOR ESTABLISHED SCHOOL ZONES.**

<i>Location</i>	<i>Restriction</i>	<i>Speed</i>
Any highway, street and/or public right-of-way	When passing a school while children are going to or leaving school and when the school zone is properly posted	Speed no greater than 15 mph

<i>Penalty Assessment Program</i>	
In every charge of violation, the complaint and the uniform traffic citation shall specify the speed at which the violator is alleged to have driven.	
<i>Miles Per Hour Driven over the Posted Speed Limit</i>	<i>Penalty, Plus Applicable Fees and Costs</i>
1 - 10	\$30
11 - 15	\$60
16 - 20	\$90
21 - 25	\$120
26 or more	\$300

(Ord. 205, passed 2-17-2005)



**TITLE IX: GENERAL REGULATIONS**

Chapter

- 90. ANIMALS**
- 91. ABANDONED OR UNSAFE BUILDINGS**
- 92. WEEDS, REFUSE AND DEBRIS**
- 93. FAIR HOUSING**
- 94. GARAGE SALES**
- 95. FIREWORKS**
- 96. FLAMMABLE LIQUIDS**



**CHAPTER 90: ANIMALS**

**Section**

- 90.01 Definitions
- 90.02 Animal control administration and enforcement responsibility
- 90.03 Rabies control
- 90.04 License and proof of vaccination required
- 90.05 Prohibited activities; crimes against animals; exceptions
- 90.06 Impoundment; notice to owners; right of redemption
- 90.07 Maximum number of dogs and/or cats permitted; license required
- 90.08 Kennels
- 90.09 Inspection required
- 90.10 Violations; suspension, denial or revocation of licenses; appeal; reinstatement; exceptions
- 90.11 Keeping of wild and exotic animals; prohibition; permit required; revocation
- 90.12 Domestic livestock prohibited; exception permit required
- 90.13 Domestic livestock running at large; prohibited
- 90.14 Breaking into or aiding or abetting breaking into impoundment enclosures
- 90.15 Obstructing the discharge of official duties of the Chief of Police or designee
- 90.16 Sale of unredeemed impounded animals
- 90.17 Amendments
  
- 90.99 Penalty

**§ 90.01 DEFINITIONS.**

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

**ANIMAL.** Any vertebrate excluding humans.

**ANIMAL SHELTER.** Any establishment authorized by the Village of Milan for the care and custody of impounded animals.

**BITE.** A puncture or tear of the skin inflicted by the teeth of an animal.

**CHIEF OF POLICE.** The Chief of Police of the Village of Milan or a person designated to enforce the provisions of this chapter.

**EXOTIC ANIMALS.** An animal that is rare or different from ordinary domesticated animals and one that is not indigenous to the area or State of New Mexico.

**KEEPER/OWNER.** Any person who owns, harbors, keeps, or has control or custody of an animal for more than 6 days. This term shall not apply to veterinarians, or licensed kennel owners who temporarily keep animals on their premises owned by others.

**KENNEL.** Any licensed establishment or premises where animals are boarded or kept.

**NUISANCE.** Is not limited to, disturbing the peace and tranquility of an area or neighborhood, emitting noxious or offensive odors, or otherwise endangering or offending the environment or the municipality.

**PERSON.** Any individual, household, firm, partnership, corporation, society, association, or any employee, agent or representative thereof.

**QUARANTINE.** To detain or isolate an animal suspected of being infected of rabies.

**RUNNING AT LARGE.**

(1) An animal off the premises of the owner or keeper and not under the direct control of a competent person.

(2) **DIRECT CONTROL** means connected to a leash not over 6 feet in length or some other equivalent means of **DIRECT CONTROL**.

**STRAY** or **ESTRAY.** Any animal that has no identifiable keeper or owner.

**VACCINATION.** The vaccination of an animal with an anti-rabies vaccine approved by the Secretary of the Health and Environment Department and administered under the supervision of a veterinarian.

**VETERINARIAN.** Any practitioner of animal medicine licensed to practice in the State of New Mexico.

**VICIOUS ANIMAL.** Any animal that commits an unprovoked attack upon a person or another animal on private property, or that terrorizes or attacks a person or other animal on public property or in a public place.

**VILLAGE OF MILAN.** The area lying within the incorporated boundaries of the municipality.

**WILD ANIMAL.** Any animal that is wild by nature and cannot normally be domesticated or controlled.  
(Ord. 187, passed 12-20-2001)

**§ 90.02 ANIMAL CONTROL ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY.**

The Chief of Police of the Village of Milan is responsible for the administration of this chapter and for the enforcement of all sections herein. The Chief of Police shall issue reasonable rules and regulations to carry out the intent and purpose of animal control within the Village of Milan. Further, he or she shall enforce the provisions of this chapter as herein prescribed and shall issue citations for violations hereof.

(Ord. 187, passed 12-20-2001)

**§ 90.03 RABIES CONTROL.**

(A) **Annual vaccination.** It is the duty of every person keeping a dog or a cat that is over the age of 3 months, to have the dog or cat vaccinated against rabies. All dogs and cats shall be vaccinated annually against rabies. Every veterinarian who vaccinates a dog or a cat shall issue to the owner or keeper of the animal, a numbered vaccination certificate and tag. The certificate and tag shall include the name and address of the owner or keeper of the animal, a description of the animal vaccinated, type of vaccine used, the date of the vaccination and the expiration date of the period of immunity.

(B) **Vaccination certificate.** Every person who keeps a vaccinated dog or cat must exhibit his or her copy of the certificate of vaccination upon demand of any person charged with enforcement of this chapter.

(C) **Harboring unvaccinated animal.** It is unlawful for any person to keep a dog or a cat that has not been vaccinated against rabies.

(D) **Reporting rabies suspect.** Every veterinarian who makes a clinical diagnosis of rabies and every person who suspects rabies in a domestic or wild animal shall immediately report the condition to Village of Milan Police and state precisely when and where the suspected rabid animal was seen and if possible where it may be found. The Village of Milan Police Department shall report the condition to the Department of Health District Office.

(E) *Human exposure to rabies.* Any person with knowledge that an animal has bitten a human being, shall immediately report the incident to the Village of Milan Police Department, who shall report the incident to the animal shelter and to the local Department of Health District Office. Further, any physician or health care professional who treats a person for a bite shall report the treatment to the Village of Milan Police Department and to the District Health Office, within 12 hours of the treatment. The report shall include the name and precise location of the person bitten.

(F) *Quarantine of rabies suspects.* Any dog or cat that has bitten a person shall be confined and observed for a period of 10 days from the date of the bite. Confinement and observation shall be at an animal shelter, a veterinary clinic or hospital, or in an approved kennel; provided however, that if the animal has a current vaccination for rabies and the area is involved is not under quarantine for rabies, the animal control officer may permit quarantine of the animal at the owner's or keeper's home. Home confinement shall not be permitted unless the premises have been inspected and approved for the purpose by the animal control officer or other person designated by the Chief of Police.

(G) *Enforcement of quarantine.* It is unlawful to remove any dog or cat from enforced quarantine during the period of confinement without the consent of the responsible animal control officer or other person designated by the Chief of Police.

(H) *Wild animal bites.* Bites inflicted by animals other than domestic dogs or cats shall be reported to the local District Health Office by the Police Department to determine appropriate disposition. (Ord. 187, passed 12-20-2001) Penalty, see § 90.99

#### **§ 90.04 LICENSE AND PROOF OF VACCINATION REQUIRED.**

For each animal under their control or ownership, every owner and/or keeper of any dog or cat 3 months of age or older shall procure a license and a rabies certificate of vaccination from a licensed veterinarian or kennel licensed to vaccinate animals.

(A) The certificate and tag shall include the name and address of the owner or keeper of the animal, a description of the animal vaccinated, type of vaccine used, the date of the vaccination and the expiration date of the period of immunity.

(B) The number of the rabies certificate of vaccination shall be affixed to a metal tag. The metal tag shall be affixed to the licensed animal. The original rabies certificate of vaccination shall be retained by the animal's keeper or owner and shall be available for inspection upon demand by any person charged with enforcement of this chapter.

(C) Upon the loss of a license tag, the animal's owner or keeper shall obtain a duplicate tag from a licensed veterinarian or kennel licensed to vaccinate animals.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

#### **§ 90.05 PROHIBITED ACTIVITIES; CRIMES AGAINST ANIMALS; EXCEPTIONS.**

(A) *False and stolen certificates and/or tags.* No person shall transfer any license or rabies tag from 1 animal to another or to make use of a stolen, counterfeit, or forged license, rabies certificate of vaccination or tag.

(B) *Animals running at large.* No owner or keeper of a dog or cat or other pet animal shall permit the animal to run at large.

(C) *Nuisance, noise area endangerment.* No owner or keeper of a dog or cat or other pet animal shall permit the animal to persistently bark, howl, or to make any other noise or to be kept or maintained in a manner as to disturb the tranquility of the area, or to endanger the health, welfare and safety of the neighborhood or the animal.

(D) *Vicious animals.* No person shall keep or harbor any vicious animal.

(E) *Physical abuse of animals.* No owner or keeper of animals shall maliciously kill, maim, torture, mutilate, burn or to cruelly drive or work any animal.

(F) *Abandonment of animals.* No owner or keeper of animals shall abandon any animal within the Village of Milan.

(G) *Poisoning of animals.* No person shall poison domestic animals or distribute poison or toxicants in any manner with the intent of poisoning.

(H) *Care and maintenance of animals.* No owner or keeper of animals shall fail to provide an animal under their care and/or control with proper food, drink and shelter, or to carry an animal in or upon any vehicle in a cruel or inhumane manner. No owner or keeper of an animal shall keep or maintain an animal in a manner as to endanger the health, welfare and safety of the animal.

(I) *Animal fights.* No person shall cause, instigate or promote any fight in which 2 or more animals are or would be engaged for the purpose of injuring, maiming or destroying themselves or another animal.

(J) *Animals as premiums or incentives to buy.* No person shall sell, attempt to sell, offer for sale, barter, or give away any live animal as a premium, prize, award, novelty or incentive to buy merchandise.

(K) *Coloring, staining or dying of feathered animals.* No person shall color, attempt to change the color of, stain or dye any feathered animal.

(L) *Turtles.* No person shall offer for sale, sell, barter or give away any turtle or turtles except in accordance with federal regulations.

(M) *Exception: confinement during Estrus (heat).* Any female dog or cat in the stage of Estrus (heat) shall be confined to a building or other secure enclosure so as to prevent contact with a male animal of the same species, except for intentional breeding purposes. Owners or keepers who do not comply with this division may be required to place the animal in a boarding kennel or veterinary hospital, at the owners or keepers expense, for the period of Estrus.  
(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

## § 90.06 IMPOUNDMENT; NOTICE TO OWNERS; RIGHT OF REDEMPTION.

A suitable animal shelter shall be provided for the purpose of boarding and caring for animals impounded under the provisions of this chapter.

(A) *Impounding animals.* Animals kept in violation of this chapter and stray animals, shall be taken into custody by an animal control officer or other designated person and thereupon be impounded.

(B) *Right of entry.* Animal control officer(s) and other designated persons, while in performance of their duties may enter upon private property, except a private residence, for the purpose of apprehending animals running at large and stray animals.

(C) *Registering of animals.* The animal control officer(s) or other designated person upon impounding or receiving any animal shall register the animal by entering the breed, color and sex of the animal and the time and place the animal was apprehended, into the registry kept for those purposes.

(D) *Notice to owner or keeper of record.* The animal control officer(s) or other designated person shall notify immediately the owner or keeper of the animal, if known, of the impoundment. If the owner or keeper is unknown, a notice of impoundment shall be conspicuously posted at the animal shelter for a period of 5 days.

(E) *Right to redeem.* The owner or keeper of any impounded animal shall have the right to redeem the animal upon payment of the impoundment fees, boarding charges, veterinary charges and any other set costs.

(F) *Time for redemption.* All impounded animals shall be redeemed within 5 days after impoundment. Any animal not redeemed within the required period for redemption, shall become the property of the animal shelter and may be placed for adoption upon payment of license fees, impoundment fees, boarding costs, veterinary charges, including for neutering or spaying and any other costs as set by the Village of Milan Trustees or the animal may be destroyed.



(G) *Disposition of animals being held on complaint.* If a complaint has been filed in the municipal court of the Village of Milan an animal in impoundment and/or against the owner or keeper of the animal, for against violating any of this chapter, the animal shall not be released except on order of the court. The court shall also direct the owner or keeper of the animal in violation of this chapter, to pay any penalties and fines for the violation in addition to all specified impoundment fees.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.07 MAXIMUM NUMBER OF DOGS AND/OR CATS PERMITTED; LICENSE REQUIRED.**

Except as otherwise herein allowed, no person shall keep more than 5 dogs or 5 cats nor any combination thereof exceeding 5 in number that are over 120 days old on any residential or business premises in the village. A kennel license as herein provided is required when the number as herein specified is exceeded.

(Ord. 187, passed 12-20-2001; Am. Ord. 241, passed 10-18-2012) Penalty, see § 90.99

**§ 90.08 KENNELS.**

(A) *License required.* Any person, group of persons, or business entity who operates a kennel shall obtain a non-transferable kennel license, that shall be posted in a conspicuous place in the kennel. A kennel license shall expire on December 31 of each year and shall be renewed as soon as possible thereafter, but in no case later than February 1 of the following year. No kennel license may be issued without an inspection certificate, issued by the Chief of Police. The annual cost of a kennel license shall be as specified in the Village of Milan licensing ordinance.

(B) *Facilities and care applicable to kennel licensing.* Animal housing facilities shall be structurally sound and shall be constructed of non-toxic materials. The facility shall be maintained in good repair and kept clean and sanitary at all times, so as to protect animals from disease and injury.

(1) Animals maintained in pens, cages or runs for periods exceeding 24 hours shall be provided with adequate space to prevent overcrowding and to permit an exercise according to requirements of the species.

(2) Indoor housing shall be provided with adequate ventilation and temperature control to provided for the animals health and comfort.

(3) Sufficient lighting shall be provided by either natural or artificial means.

(4) Outdoor housing shall provide for sufficient protection from excessive sunlight, rain, snow, sleet or cold weather.

(5) Provisions shall be made to for the removal and disposal of animal and food waste, bedding, dead animals and debris.

(6) Disposal facilities shall operate to minimize vermin infestation, odors and disease hazards.

(7) Food and water containers shall be kept clean and fresh food and water provided daily.

(8) Every animal in a licensed kennel shall be observed daily and diseased or injured animals shall be provided veterinary care.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.09 INSPECTION REQUIRED.**

(A) The Chief of Police or a designated person shall be permitted to enter, at any reasonable time, for the purpose of inspecting or re-inspecting any kennel or pet shop to determine compliance with this chapter.

(B) The Chief of Police shall inspect or cause an inspection to be done at least quarterly.

(Ord. 187, passed 12-20-2001)

**§ 90.10 VIOLATIONS; SUSPENSION, DENIAL OR REVOCATION OF LICENSES; APPEAL; REINSTATEMENT; EXCEPTIONS.**

(A) *Violations; penalty.* A kennel license shall be denied, revoked or suspended by the Chief of Police upon a determination the operator of a kennel or a pet store is in violation of any of these sections.

(B) *Appeal and hearing.* Any operator of a kennel or pet store, whose license has been denied, revoked, or suspended may request an appeal hearing before the governing body of the Village of Milan at a set time and place. The governing body of the Village of Milan shall, based upon the record, make a finding and shall sustain, modify or rescind the action before the governing body.

(C) *Reinstatement.* Any owner or operator of a kennel whose license has been suspended or revoked may make application for reinstatement of the license. If, following a re-inspection, the applicant has complied with the requirements of this chapter, the license shall be reinstated.

(D) *Exception.* This section shall not apply to and shall not be construed to require a kennel license for:

- (1) A veterinary hospital or clinic operated by a licensed veterinarian;
  - (2) A bonafide research institution using animals for scientific research;
  - (3) A publicly owned animal control center or shelter; or
  - (4) A bonafide animal shelter operated by an organized humane society.
- (Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.11 KEEPING OF WILD AND EXOTIC ANIMALS; PROHIBITION; PERMIT REQUIRED; REVOCATION.**

(A) Keeping of wild and exotic animals herein described are prohibited:

(1) Wild animals kept in numbers or in a manner as to constitute a likelihood of harm to the animals themselves, or to other animals, or to human beings, or to property of human beings, or that constitutes a public or private nuisance; or

(2) Exotic or wild animals prohibited by federal, New Mexico state law or regulation.

(B) *Permit required.* No person shall receive, purchase, own or keep wild or exotic animals without first applying for and receiving from the governing body and from the State of New Mexico Department of Game and Fish, a permit to do so. Any applicant shall provide evidence of knowledge and have the facilities for the care and feeding of the animals involved.

(C) *Inspection of facilities required.* The Chief of Police or a designated person shall be permitted to enter, at any reasonable time, for the purpose of inspecting or re-inspecting any kennel or pet shop to determine compliance with this chapter. The Chief of Police shall inspect or cause an inspection to be done at least quarterly.

(D) *Denial, revocation and/or suspension of permits.* The Chief of Police, the governing body of the Village of Milan or the New Mexico State Department of Game and Fish shall deny, revoke and/or suspend a permit for keeping of wild and exotic animals for violating provisions of this chapter.

(E) *Appeal of denial, revocation and/or suspension of permits.*

(1) If action is taken on a permit by the Chief of Police, the owner or keeper of the animals may request an appeal hearing before the governing body of the Village of Milan at a set time and place.

(2) The governing body of the Village of Milan shall, based upon the record, make a finding and shall sustain, modify or rescind the action before the governing body or refer the appeal to the New Mexico State Department of Game and Fish. (Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.12 DOMESTIC LIVESTOCK PROHIBITED; EXCEPTION PERMIT REQUIRED.**

(A) *Generally.* It shall be unlawful for any person to keep any domestic livestock, including but not limited to horses, cattle, mules, donkeys, swine, goats, sheep or fowl within the municipal limits of the Village of Milan.

(B) *Exceptions.*

(1) *Permit required.* Before any domestic livestock shall be permitted within the municipal limits of the Village of Milan, each owner or keeper of the animals shall apply for and receive a permit to domicile the animal or animals on any property. The application for a permit shall be requested on forms available at the Village of Milan village hall. The application shall include a non-refundable fee of \$50 for the cost of administration. If approved, the permit fee shall be \$35, renewable annually on December 31 of each year. Each species of domestic animal shall require a separate permit.

(2) *Inspection of facilities required.* The Chief of Police or a designated person shall be permitted to enter, at any reasonable time, for the purpose of inspecting or re-inspecting any place where domestic livestock is domiciled to determine compliance with the provisions of this chapter. The Chief of Police shall inspect or cause an inspection to be done at least quarterly.

(3) *Denial, revocation and/or suspension of permits.* The Chief of Police, the governing body of the Village of Milan shall deny, revoke and/or suspend a permit for keeping of domestic livestock in violation of this chapter.

(4) *Appeal of denial, revocation and/or suspension of permits.* If action is taken on a permit by the Chief of Police, the owner or keeper of the animals may request an appeal hearing before the governing body of the Village of Milan at a set time and place. The governing body of the Village of Milan shall, based upon the record, make a finding and shall sustain, modify or rescind the action before the governing body. (Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.13 DOMESTIC LIVESTOCK RUNNING AT LARGE; PROHIBITED.**

(A) *Domestic animals running at large.* It is unlawful for any owner or keeper to permit domestic livestock to be turned loose, abandoned or to run at large within the municipal limits of the Village of Milan; or for any animal to be tethered so that it may roam across or into any street or public place within the Village of Milan.

(B) *Impoundment.* Every animal running at large shall be impounded by the Chief of Police who shall also provide for the proper care and maintenance of the animal so impounded, at the expense of the owner or keeper, including any veterinary care.

(C) *Notice of impoundment.*

(1) Within 24 hours of impounding of any domestic animals, the Chief of Police shall notify the owner or keeper of the impoundment, if the Chief of Police is unable to determine the owner or keeper of the animal, he or she shall post conspicuously, in public places within the Village of Milan for 5 consecutive days, a notice of impoundment.

(2) The notice shall include a description of the animal.

*(D) Right of redemption of impounded animals.*

Upon presenting proper documentation of ownership of an impounded animal(s), the owner, keeper or possessor of the impounded animal may redeem the animal from impoundment. An impoundment fee shall be collected by the Village of Milan as follows:

(1) An impoundment fee of \$100 for each large animal impounded (cattle or horses) or \$50 for each small animal (sheep, goats, swine, fowl) shall be paid before the animal may be released by the Chief of Police or his or her designee; and

(2) The impound fee shall be in addition to any costs incurred by the Village of Milan for care, feeding and maintenance of the animal, including any veterinary fees.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.14 BREAKING INTO OR AIDING OR ABETTING BREAKING INTO IMPOUNDMENT ENCLOSURES.**

It shall be unlawful for any person to break into or to aid and/or abet the breaking into any enclosure in which any animal is impounded. Any person violating this provision shall be guilty of a misdemeanor.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.15 OBSTRUCTING THE DISCHARGE OF OFFICIAL DUTIES OF THE CHIEF OF POLICE OR DESIGNEE.**

It shall be unlawful for any person to willfully or intentionally hinder or obstruct the Chief of Police or his or her designee while in the discharge of official duties under the provisions of this chapter. Any person violating this provision shall be guilty of a misdemeanor.

(Ord. 187, passed 12-20-2001) Penalty, see § 90.99

**§ 90.16 SALE OF UNREDEEMED IMPOUNDED ANIMALS.**

*(A) Sale of unredeemed animals.* Any animal unredeemed after the aforesaid 24-hour notification to the owner or keeper, if known, by the Chief of Police, or at the end of the aforesaid 5-day notification posted by the Chief of Police, the Chief of Police shall post a notice of sale for a 5-day period, indicating that any unredeemed animal(s) shall be set for sale to the highest bidder on the day following the 5-day notification, except when that day falls on Sunday, a legal holiday or an election day, in which case the sale shall occur the next succeeding day. The Chief shall sell to the highest bidder for cash, the animal advertised, and shall furnish to the purchaser a bill-of-sale.

*(B) Redemption during notification period.* Any time during the 5-day notification of sale, the owner or keeper may redeem the animal after paying the fees and costs as herein provided.

*(C) Proceeds of sale.* After the sale, the Chief of Police shall turn over to the Village of Milan all proceeds of the sale and shall maintain records of the sale. The Chief of Police shall also furnish a monthly report to the Village of Milan showing all animals impounded, owners or keeper, if known, and the disposition of each case. All animals shall be listed individually and the amount of money collected on each.

(Ord. 187, passed 12-20-2001)

**§ 90.17 AMENDMENTS.**

Amendments to this chapter shall be adopted as a numerical extension of the chapter, and this chapter shall not be repealed by an amendment. Any amendment shall become a part hereof as provided for under New Mexico State Law, and so indicated so that a reference to animal control shall be understood as including any amendments.

(Ord. 187, passed 12-20-2001)

**§ 90.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



## CHAPTER 91: ABANDONED OR UNSAFE BUILDINGS

### Section

- 91.01 Nuisance
- 91.02 Abatement of nuisance
- 91.03 Enforcement
- 91.04 Jurisdiction
- 91.05 Action in District Court
- 91.06 Severability

- 91.99 Penalty

### *Cross-reference:*

*Nuisances, see Chapter 135*

### § 91.01 NUISANCE.

It is unlawful for any property owner, landlord, tenant, and/or occupant, of any real property within the Village of Milan to allow the property including houses, garages, out buildings, mobile homes, trailers and any and all other structures under their ownership and/or control to be or become in a state of disrepair and condition as to become a public nuisance. Any structure is a public nuisance when, because of its condition, the condition of the contents and fixtures in the structure, and/or the general condition of the premises including the land or yard surrounding the structure, it is injurious to the public's health, safety, morals and welfare and/or interferes with the exercise and enjoyment of the public's right including the neighbors right to use other public and private property.

(Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998) Penalty, see § 91.99

### § 91.02 ABATEMENT OF NUISANCE.

Every person including the property owner, landlord, tenant, and/or occupant of any property where a nuisance exists, shall immediately abate the nuisance by the prompt repair of the structure, or if repair is impossible, the prompt removal of the structure, it's contents and the condition which makes the premises a nuisance including cleaning the yard and land surrounding the structures.

(Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998) Penalty, see § 91.99

### § 91.03 ENFORCEMENT.

(A) (1) When property is determined to be a nuisance, a police officer of the Village of Milan or village ordinance enforcement officer shall issue a formal written citation to all persons having an ownership or leasehold interest in the land. The written citation shall advise the persons of the condition that constitutes a nuisance and shall advise the persons that they have 30 days to abate the nuisance. The citation shall be sent by certified mail to the person's last known address. For purpose of this chapter a person is any individual, partnership and/or corporation who has an ownership interest or leasehold interest in any real property within the Village of Milan.

(2) In determining whether a structure, its contents, and/or the surrounding land and yard is a nuisance, the officer shall determine whether or not the condition of the premises is in violation of any state health, safety, environmental, fire and/or building code statute and rules and regulations promulgated thereunder and any other ordinance of the Village of Milan.

(B) (1) Within the 30-day period, persons having an ownership or leasehold interest in the property shall cause the nuisance to be abated.

(2) As a service to the public, the Village of Milan will offer its services to any person wishing to abate the nuisance by clearing structures, contents of structures and the surrounding land and yard. Any person, after receiving a citation, may reach an agreement with the village to perform the clean up service. The Village of Milan will charge the person an amount equal to its cost and expenses to clear the property and no more. If the village's services are requested the person requesting the service shall be given a statement for the service within 30 days of the billing. If the village's services are not paid for, the village may file a lien against the property involved and enforce the lien as allowed by law.

(C) It is not a defense by any owner, landlord, tenant, and/or occupant of real property in the Village of Milan to claim that the abatement of the nuisance is the responsibility or duty of another person having an ownership or leasehold interest in the real property.

(D) If the nuisance is not abated within 30 days after the written citation is mailed to all persons having an interest in the land, a police officer of the Village of Milan or the ordinance enforcement officer shall cause a criminal complaint to be filed against all persons having an interest in the property in the Municipal Court of the Village of Milan. (Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998) Penalty, see § 91.99

#### § 91.04 JURISDICTION.

The Municipal Court of the Village of Milan shall have jurisdiction to enforce this chapter over all real property within the boundaries of the Village of Milan and over all persons having an ownership or leasehold interest in the property regardless of whether those persons live within or outside of the boundaries of the village. Persons include all individuals, partnerships, and/or corporations. (Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998)

#### § 91.05 ACTION IN DISTRICT COURT.

(A) If the nuisance is not abated and continues after there has been an attempt to abate the nuisance by following the enforcement provisions of this chapter as provided in §§ 91.03, 91.04 and 91.99, then in that event the nuisance will be referred to the Board of Trustees' of the village by the village ordinance enforcement officer.

(B) The village ordinance enforcement officer shall file a written report with the Mayor and Board of Trustees' detailing the nuisance he or she is trying to abate, describing all enforcement action he or she has attempted and the results of the action taken.

(C) The Board of Trustees' shall review the report of the village ordinance enforcement officer and if the Board of Trustees' deem that further action is in the best interest of the Village of Milan, the Board shall instruct its Village Attorney to file the appropriate action in New Mexico State District Court to abate the nuisance complained of. (Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998)

#### § 91.06 SEVERABILITY.

If any of the sections, divisions, sentences, clauses or phrases of this chapter are held to be unconstitutional or invalid for any reason, the validity of remaining portion of this chapter shall not be hereby affected, since it is the expressed intent of the Board of Trustees to adopt each section, phrase, paragraph, and work of this chapter separately. (Ord. 169, passed 8-17-1994; Am. Ord. 181, passed 10-20-1998)

#### § 91.99 PENALTY.

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



## CHAPTER 92: WEEDS, REFUSE AND DEBRIS

### Section

- 92.01 Duties of property owner
- 92.02 Accumulation of refuse prohibited
- 92.03 Authority of Board of Trustees
- 92.04 Service and publication of notice
- 92.05 Completion of work

### § 92.01 DUTIES OF PROPERTY OWNER.

It shall be unlawful and a violation of the Village of Milan Code for the owner, agent, lessee or occupant of any lots, tracts, parcels or properties, improved or unimproved, within the village limits to allow weeds, bushes to lie or grow or be located upon property so that they become a health hazard or become unsightly or noxious.

(Ord. 131, passed 9-3-1986) Penalty, see § 10.99

### § 92.02 ACCUMULATION OF REFUSE PROHIBITED.

It shall be unlawful and a violation of the Village of Milan Code for an owner, agent, lessee or occupant of any lots, tracts, parcels or other properties, improved or unimproved, within the village limits to allow refuse, rubbish, garbage, trash, solid waste, abandoned fences or unsightly or dangerous debris to accumulate upon property.

(Ord. 131, passed 9-3-1986) Penalty, see § 10.99

### § 92.03 AUTHORITY OF BOARD OF TRUSTEES.

(A) The village through its employees shall have the authority to identify and investigate all properties which may be in violation of this chapter.

(B) If as a result of the investigation, the Village of Milan finds or determines that the premises investigated are a menace to public health, peace, safety or the appearance of the Village of Milan, the Village Clerk or other designated village official shall order and direct the owner, occupant or agent in charge of the property or premises to remove the weeds, rubbish, wreckage or debris which is in violation of this chapter.

(1) The Village Clerk or Code Enforcement Officer or other designated village office shall so notify the individual that the removal must commence within 10 days of receipt of the notice or an appeal to the Village Board of Trustees must be filed with the Village Clerk within the initial 10-day period.

(2) If appealed, the Village Board of Trustees then shall fix a date or a hearing upon its order and consider all evidence for and against the proposed removal and determine if the order should be enforced or rescinded.

(3) If enforced, the Village Board of Trustees shall then notify the owner, occupant or agent of the property of premises that he or she must in turn appeal their decision, if dissatisfied, within 15 days of its decision to the District Court located within Cibola County.

(4) If the owner, occupant or agent fails to commence the removal of the material within 10 days of being originally served; 15 days of the decision of the Village Board or 15 days of the decision of the District Court upholding the determination of the Village Board of Trustees, whichever is the latest, the village shall remove the material at a cost and expense to the owner of the property and the reasonable cost of the removal shall constitute a lien against the property from which it was removed and the lien shall be subject to foreclosure in the manner provided by NMSA §§ 3-36-1 *et seq.*, 1978.

(Ord. 131, passed 9-3-1986) Penalty, see § 10.99

#### **§ 92.04 SERVICE AND PUBLICATION OF NOTICE.**

In the event that notice or notices as herein provided cannot be served upon the owner, occupant or agent, a notice shall be mailed by registered mail, postage prepaid to the owner at the address as shown by the real estate records of the Cibola County Clerk. (Ord. 131, passed 9-3-1986)

#### **§ 92.05 COMPLETION OF WORK.**

If the owner, agent, lessee or occupant of any property subject to citation hereunder undertakes to or remove those items described in §§ 92.01 and 92.02 within the time provided, the work must be completed within 10 days of commencement or the village shall have the right to proceed under § 92.03(B)(4) upon 10-days' notice. Extension of this time limit may be granted upon a showing of good cause to the Village Clerk. Any appeal of any of the decisions made hereunder must be made within 10 days of the rendition to the Village Board of Trustees and otherwise the procedure as contained in § 92.03 shall be followed.

(Ord. 131, passed 9-3-1986)

## CHAPTER 93: FAIR HOUSING

### Section

- 93.01 Policy
- 93.02 Definitions
- 93.03 Unlawful practice
- 93.04 Discrimination in the sale or rental of housing
- 93.05 Discrimination in residential real estate-related transactions
- 93.06 Discrimination in the provision of brokerage services
- 93.07 Exemption
- 93.08 Administration
- 93.09 Education and conciliation
- 93.10 Enforcement
- 93.11 Investigations; subpoenas; giving of evidence
- 93.12 Enforcement by private persons
- 93.13 Interference; coercion; intimidation
- 93.14 Separability of provisions
- 93.15 Prevention of intimidation in Fair Housing cases

### § 93.01 POLICY.

It is the policy of the Village of Milan to provide, within constitutional limitations, for fair housing throughout the village.  
(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### § 93.02 DEFINITIONS.

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

**AGGRIEVED PERSON.** Includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that they will be injured by a discriminatory housing practice that is about to occur.

**CHIEF ELECTED OFFICIAL.** The person who holds the highest elected position of the local unit of government and who is signatory to the Small Cities Community Development Block Grant agreement with the Local Government Division.

**COMPLAINANT.** The person (including the Chief Elected Official) who files a complaint under § 93.10.

**DISCRIMINATORY HOUSING PRACTICE.** An act that is unlawful under § 93.04, § 93.05 and § 93.06 of this chapter.

**DWELLING.** Any building, structure or portion thereof which is occupied as, designed or intended for occupancy as a residence by 1 or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

**FAMILIAL STATUS.**

(1) One or more individuals (who have not attained the age of 18 years) being domiciled with:

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

(2) The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

**FAMILY.** Includes a single individual.

**HANDICAP.** With respect to a person:

(1) A physical or mental impairment which substantially limits 1 or more of such person's major life activities;

(2) A record of having such an impairment;  
or

(3) Being regarded as having such an impairment, but such a term does not include current, illegal use of or addiction to, a controlled substance (as defined in § 102 of the Controlled Substances Act, 21 U.S.C. § 802).

**PERSON.** Includes 1 or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

**RESPONDENT.**

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under § 93.10.

**TO RENT.** Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

**§ 93.03 UNLAWFUL PRACTICE.**

Subject to the provisions of division (B) and § 93.07, the prohibitions against discrimination in the sale or rental of housing set forth in § 93.03 shall apply to:

(A) All dwellings except as exempted by division (B).

(B) Nothing in § 93.04 shall apply to:

(1) Any single-family house sold or rented by an owner, provided that such a private individual owner does not own more than 3 such single-family houses at any 1 time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale, or who was not the most recent resident of such house prior to such sale, the exemption granted by this section shall apply only with respect to 1 such sale within any 24-month period; provided further, that such bonafide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than 3 such single-family houses at any 1 time; provided further, that the sale or rental of any such single-family house shall be excepted from the application of this chapter only if such a house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson or of such facilities or services of any person in the

business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person; and

(b) Without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 93.04, but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in dwellings contained living quarters occupied or intended to be occupied by no more than 4 families, living independently of each other, if the owner actually maintains and occupies 1 of such living quarters as their residence.

(C) For the purposes of division (B) above, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) They have, within the preceding 12 months, participated as principal in 3 or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) They have, within the preceding 12 months, participated as agent, other than in the sale of their own personal residence in providing sales or rental facilities or sales or rental services in 2 or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) They are the owner of any dwelling designed or intended for occupancy by, or occupied by, 5 or more families.  
(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

#### **§ 93.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.**

As made applicable by § 93.03 and except as exempted by §§ 93.03(B) and 93.07, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bonafide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin;

(B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin;

(C) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination;

(D) To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available; and

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

#### **§ 93.05 DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.**

(A) *In general.* It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

(B) *Definition.* As used in this section, the term **RESIDENTIAL REAL ESTATE-RELATED TRANSACTION** means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(a) For purchasing, constructing, improving, repairing or maintaining a dwelling;

(b) Secured by residential real estate;

or

(2) The selling, brokering or appraising of residential real property.

(C) *Appraisal exemption.* Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status or national origin.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

#### **§ 93.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES.**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against them in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status or national origin.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

#### **§ 93.07 EXEMPTION.**

Nothing in this chapter shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by, or in conjunction with, a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns

or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. (Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

#### **§ 93.08 ADMINISTRATION.**

(A) The authority and responsibility for administering this chapter shall be in the chief elected official of the village.

(B) The chief elected official may delegate any of these functions, duties and powers to employees of the village or to boards of such employees, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this chapter. The chief elected official shall by rule prescribe such rights of appeal from the decisions of their hearing examiners, to other hearing examiners or to other offices in the village, to boards of officers or to themselves, as shall be appropriate and in accordance with law.

(C) All village department and agencies shall administer their programs and activities relating to housing and community development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief elected official to further such purposes.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### § 93.09 EDUCATION AND CONCILIATION.

Immediately after the enactment of this chapter, the chief elected official shall commence such educational conciliatory activities as will further the purposes of this chapter. He or she shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and the suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and enforcement.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### § 93.10 ENFORCEMENT.

(A) Any person who claims to have been injured by a discriminatory housing practice or who believes that they will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter aggrieved person) may file a complaint with the chief elected official. Complaints shall be in writing and shall contain such information, and be in such form as the chief elected official requires. Upon receipt of such a complaint, the chief elected official shall furnish a copy of the same to the person or persons who have committed, or are about to commit, the alleged discriminatory housing practice. Within 30 days after receiving a complaint or within 30 days after the expiration of any period reference under division (C) below, the chief elected official shall investigate the complaint and give notice in writing to the aggrieved person whether they intend to resolve it. If the chief elected official decides to resolve the complaints, they shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. Any employee of the chief elected official who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(B) A complaint under division (A) shall be filed within 180 days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the chief elected official, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both complaints and answers shall be verified.

(C) If within 30 days after a complaint is filed with the chief elected official, the chief elected official has been unable to obtain voluntary compliance with this chapter, the aggrieved person may, within 30 days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The chief elected official will assist in this filing.

(D) If the chief elected official has been unable to obtain voluntary compliance within 30 days of the complaint, the aggrieved person may, within 30 days thereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(E) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(F) Whenever an action filed by an individual comes to trial, the chief elected official shall immediately terminate all efforts to obtain voluntary compliance.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

**§ 93.11 INVESTIGATIONS; SUBPOENAS; GIVING OF EVIDENCE.**

(A) In conducting an investigation, the chief elected official shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. Provided, however, that the chief elected official first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The chief elected official may issue subpoenas to compel their access to, or the production of, such materials, or the appearance of such persons and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking place. The chief elected official may administer oaths.

(B) Upon written application to the chief elected official, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the chief elected official to the same extent and subject to the same limitations as subpoenas issued by the chief elected official. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at their request.

(C) Witnesses summoned by subpoena of the chief elected official shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.

(D) Within 5 days after service of a subpoena upon any person, such person may petition the chief elected official to revoke or modify the subpoena. The chief elected official shall grant the petition if they find that the subpoena requires appearance or attendance at an unreasonable time or place, that it

requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(E) In case of contumacy or refusal to obey a subpoena the chief elected official, or other person at whose request it was issued, may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served or transacts business.

(F) Any person who willfully fails or neglects to attend and testify, or to answer any lawful inquiry, or to produce records, documents or other evidence, if in his or her power to do so, in obedience to the subpoena or lawful order of the chief elected official shall be fined not more than \$1,000 or imprisoned not more than 1 year or both. Any person who, with intent thereby to mislead the chief elected official, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the chief elected official pursuant to his or her subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(G) The Village Attorney shall conduct all litigation in which the chief elected official participates as a party or as amicus pursuant to this chapter.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

**§ 93.12 ENFORCEMENT BY PRIVATE PERSONS.**

(A) The rights granted by §§ 93.03, 93.04, 93.05 and 93.06 may be enforced by civil actions in the appropriate United States district, state or municipal court. A civil action shall be commenced



within 180 days after the alleged discriminatory housing practice occurred. Provided, however, that the court shall continue such a civil case brought pursuant to this section or § 93.10 from time to time before bringing it to trial if the court believes that the conciliation efforts of the chief elected official are likely to result in satisfactory settlement of the alleged discriminatory housing practice complained of in the complaint made to the chief elected official and which practice forms the basis for the action in court. And provided, however, that any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this chapter and involving a bonafide purchaser, encumbrancer or tenant without actual notice of the filing of a complaint or civil action under the provisions of this chapter shall not be affected.

(B) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order and may award to the plaintiff actual damages and not more than \$1,000 in punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff. Provided, that the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### **§ 93.13 INTERFERENCE; COERCION; INTIMIDATION.**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 93.03, 93.04, 93.05 or 93.06 of this chapter. This section may be enforced by appropriate civil action.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### **§ 93.14 SEPARABILITY OF PROVISIONS.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

### **§ 93.15 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.**

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(A) Any person because of their race, color, religion, sex, handicap, familial status, or national origin and because they are or have been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service organization or facility relating to the business of selling or renting dwellings; or

(B) Any person because they are or have been, or in order to intimidate such person or any other person or any class of persons from:

(1) Participating, without discrimination because of race, color, religion, sex, handicap, familial status or national origin, or in any of the activities, services, organizations, or facilities described in division (A) above; or

(2) Affording another person or class of persons opportunity or protection to participate; or

(C) Any citizen because they are or have been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status or national origin, in any of the activities, services, organizations or facilities described in division (A), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate, shall be fined not more than \$1,000 or imprisoned not more than 1 year or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than 10 years or both; and if death results shall be subject to imprisonment for any term of years or for life and/or to other applicable local/state/federal laws.  
(Ord. 170, passed 12-21-1994; Am. Ord. 235, passed 7-21-2011)

## CHAPTER 94: GARAGE SALES

### Section

94.01	Definitions
94.02	Regulation
94.03	Notification of location
94.99	Penalty

(C) Signs advertising sale may be put at other private property locations with the permission of property owner.

(D) Absolutely no signs will be posted or placed on village or state property, such as medians, street signs, sidewalks, buildings, fences and the like.

(E) Not more than 4 sales per year shall be held at the premises if occupied by the same family or any family member of that family.

(F) These sales should not exceed the period of between 7:00 a.m. and 6:00 p.m. of any day and shall not extend in excess of 2 days.

(Ord. 197, passed 2-28-2003) Penalty, see § 94.99

### § 94.01 DEFINITIONS.

**GARAGE SALE** means any sale or offering for sale of multiple items of personal property where the location of the sale or offering is at a location not zoned commercial transactions or in a residential neighborhood. **GARAGE SALES** include rummage sales, yard sales, and any other similar disposal of personal property or baked goods.  
(Ord. 197, passed 2-28-2003)

### § 94.03 NOTIFICATION OF LOCATION.

(A) *Generally.* Any person (s) proposing to conduct or carry on a garage sale must fill out a location detail form and pick up a copy of this chapter regarding regulations of garage sales. The location detail form will then be posted at the Village of Milan hall with these steps complete you will receive a garage sale approval certificate to post at the garage sale location during the garage sale.

#### (B) *Checklist to complete.*

(1) Pick up a copy of this chapter regarding garage sales.

(2) Fill out a location detail form at the Village of Milan hall prior to the date of garage sale.

(3) The Village of Milan will post location and date of sale in the lobby at the village hall.

### § 94.02 REGULATION.

Any person (s) proposing to conduct or carry on a garage sale shall be subject to the following regulations:

(A) All sale items shall be limited to used domestic items or handcrafted and baked goods, made or owned by the garage sale person(s).

(B) No signs shall be posted anywhere in the village advertising these sales. The property owner may install a sign on the residential lot in which these sales are to be held, on a sign no larger than 18 inches by 30 inches, advertising the sale. The sign shall be erected no sooner than 1 day prior to the date of the sale and shall be removed no later than 1 day after the sale ends.

(4) Post garage sale approval certificate on the garage sales premises in a conspicuous place so as to be seen from the street or road on which the sale faces.

(Ord. 197, passed 2-28-2003) Penalty, see § 94.99

**§ 94.99 PENALTY.**

(A) The Municipal Court of the Village of Milan shall have jurisdiction to enforce this chapter over all real property within the boundaries of the Village of Milan and over all person(s) operating and/or participating in a garage sale within the boundaries of the Village of Milan whether those person(s) live within or outside the boundaries of the Village of Milan. (Person(s) include all individuals, partnerships, or corporations, and the like.)

(B) Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of up to \$500 or imprisonment for up to 90 days, or both.

(C) Each day during which any violation of this ordinance continues or exists shall be deemed to be a separate violation.

(Ord. 197, passed 2-28-2003)

**CHAPTER 95: FIREWORKS**

Section

*Fireworks*

**FIREWORKS**

- 95.01 Title
- 95.02 Purpose
- 95.03 Definitions
- 95.04 Application and permit
- 95.05 Display fireworks
- 95.06 Restrictions
- 95.07 Inspection
- 95.08 Permissible fireworks
- 95.09 Prohibited fireworks and restrictions on sales
- 95.10 Seizure of fireworks

***Sale, Use and Possession of Fireworks During Periods of Extreme or Severe Drought***

- 95.25 Short title
- 95.26 Purpose
- 95.27 Jurisdiction
- 95.28 Liberal construction
- 95.29 Effective date
- 95.30 Severability
- 95.31 Sale and use of certain fireworks prohibited
- 95.32 Restrictions on use of certain fireworks
- 95.33 Use of fireworks in wildlands prohibited
- 95.34 Display fireworks
- 95.99 Penalty

**§ 95.01 TITLE.**

This chapter shall be cited as the Village of Milan Fireworks Chapter.  
(Ord. 191, passed 5-23-2002)

**§ 95.02 PURPOSE.**

This chapter is to provide authorized local enforcement of the New Mexico Fireworks Licensing and Safety Act and to assist in protecting the public health, welfare and safety of the residents of the Village of Milan.  
(Ord. 191, passed 5-23-2002)

**§ 95.03 DEFINITIONS.**

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

**AERIAL SPINNER.** A tube containing no more than 20 grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight.

**APPLICANT.** The person issued a permit and the person responsible to the Village of Milan as provided for in this chapter.

**BOARD.** The Board of Trustees of Milan.

**CHASER.** A paper or cardboard tube venting out the fuse end of the tube that contains no more than 20 grams of chemical combustion and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed 50 milligrams may be included to produce a report.

**CHEMICAL COMPOSITION.** Includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic material such as rice hulls used for density control.

**CLERK.** The Municipal Clerk of the Village of Milan.

**CONE FOUNTAIN.** A cardboard or heavy paper cone containing no more than 50 grams of pyrotechnic composition that has the same effect as a cylindrical fountain; and when more than 1 cone is mounted on a common base, total pyrotechnic composition shall not exceed 200 grams.

**CRACKLING DEVICE.** A sphere or paper tube that contains no more than 20 grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion; crackling devices are not subject to the 50 milligram limit of firecrackers.

**CYLINDRICAL FOUNTAIN.** A cylindrical tube containing not more than 75 grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke; the device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held; and when more than 1 tube is mounted on a common base, total pyrotechnic composition shall not exceed 200 grams.

**DISPLAY DISTRIBUTOR.** Any person, firm, or corporation selling display fireworks.

**DISPLAY FIREWORKS.** Devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion,

deflagration or detonation, including salutes containing more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks.

**EXPLOSIVE COMPOSITION.** Any chemical compound or mixture, the primary purpose of which is to function by explosion, producing and audible effect in a fireworks device.

**FIRE CHIEF.** The Milan Fire Chief or his or her designated representative.

**FIRECRACKER.** A small, paper-wrapped or cardboard tube containing no more than 50 milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to 130 milligrams of explosive composition per report.

**FIREWORKS.** Devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as **PERMISSIBLE FIREWORKS**, **PROHIBITED FIREWORKS** or **DISPLAY FIREWORKS**.

**FLITTER SPARKLER.** A narrow paper tube attached to a stick or wire and filled with no more than 5 grams of pyrotechnic composition that produces color and sparks with no more than 5 grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at 1 end of the tube is ignited to make the device function.

**GROUND SPINNER.**

(1) A small, rapidly spinning device containing no more than 20 grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color.

(2) **GROUND SPINNER** is similar in operation to wheel, but is intended to be placed flat on the ground and ignited.

**HELICOPTER.** A tube containing no more than 20 grams of chemical composition with a propeller of blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight.

**ILLUMINATING TORCH.** A cylindrical tube containing no more than 100 grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held; and when more than 1 tube is mounted on a common base, total pyrotechnic composition shall not exceed 200 grams.

**MINE.** A heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than 40 grams of chemical composition plus not more than 20 grams of lift charge per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum 130 milligrams of explosive composition per report; a mine may contain more than 1 tube, but the tubes must fire in sequence upon ignition of 1 external fuse and the total chemical composition, including lift charges, of a multiple tube device shall not exceed 200 grams.

**MISSILE-TYPE ROCKET.** A device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than 20 grams of chemical composition.

**PERMISSIBLE FIREWORKS.** Fireworks legal for sale to and use in New Mexico by the general public.

**PORTABLE BUILDINGS.** Any structure, tent, trailer or vehicle which is of temporary nature or design which is used separately or together for the retail sale of fireworks to the general public. Any tent intended for use as a sales location shall comply with rules adopted by the State Fire Marshal.

**PROHIBITED FIREWORKS.** Fireworks which are not legal for sale or possession within the municipality.

**PYROTECHNIC COMPOSITION.** A chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion.

**ROMAN CANDLE.** A heavy paper or cardboard tube containing no more than 20 grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect.

**SHELL.** A heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than 40 grams of chemical composition plus not more than 20 grams of lift charge per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum 130 milligrams of explosive composition per report; a mine may contain more than 1 tube, but the tubes must fire in sequence upon ignition of one external fuse and the total chemical composition, including lift charges, of a multiple tube device shall not exceed 200 grams.

**STATUTE.** For the purposes of this chapter refers to the State of New Mexico Fireworks Licensing and Safety Act beginning with NMSA § 60-2C-1, 1978.

**STICK-TYPE ROCKET.** A cylindrical tube containing no more than 20 grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight.

**TOY SMOKE DEVICE.** A small plastic or paper item containing no more than 100 grams of pyrotechnic composition that produces white or colored smoke as the primary effect.

**VENDOR.** Any person or business engaged in the retail sale of fireworks to the general public.

**WHEEL.** A pyrotechnic device that is made to attach to a post or other surface that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have 1 or more drivers, each of which contains no more than 60 grams of pyrotechnic composition and the total wheel contains no more than 200 grams total pyrotechnic composition.

(Ord. 191, passed 5-23-2002)

#### § 95.04 APPLICATION AND PERMIT.

(A) All vendors of fireworks within the municipality must obtain a local fireworks retail sales permit from the Clerk. Each sales location within the municipality shall have a separate permit.

(B) A permit may be issued by the municipality and upon issuance, shall be valid for 1 year unless revoked as otherwise provided in this chapter. Vendors must present, at the time of application for permit, a copy of a written agreement for use, rent or lease of land intended for the vendor's sales location, unless the vendor is located within a permanent structure. The written agreements for use, rent or lease of land for use as a fireworks sales location shall be signed by the owner, property manager or tenant having authority to execute the documents.

(1) Applications will be accepted up to the first day of any selling period. Vendors and/or businesses shall provide the municipality with a copy of the state issued license or permit for the sale of fireworks with the application.

(2) Vendors who sell fireworks shall pay a \$35 permit fee except those retail businesses located at permanent locations that possess a current municipal business registration or license.

(3) Vendors are responsible for the applicable municipal gross receipts taxes.

(4) Portable buildings must be set back a reasonable distance from the roadway and shall not obstruct the public right-of-way.

(5) No fireworks shall be stored, kept, sold, or discharged within 50 feet of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of 1 gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

(6) At all places where fireworks are stored, sold or displayed, the words NO SMOKING shall be posted in letter at least 4 inches in height. Smoking, open flames and any ignition sources are prohibited within 25 feet of any fireworks stock.

(7) Original permits must be prominently displayed at each location at all times.

(8) All fireworks permit holders and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least 5 pound ABC per 500 square feet of space used for fireworks sales or storage.

(Ord. 191, passed 5-23-2002) Penalty, see § 95.99

#### § 95.05 DISPLAY FIREWORKS.

Nothing herein shall prohibit the public display of fireworks, except that any individual association, partnership, corporation, organization, county or municipality, shall secure a permit from the governing body of the Village of Milan where the public display is to be fired. The display fireworks shall be purchased from a distributor or display distributor licensed by the State Fire Marshal and the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury.

(Ord. 191, passed 5-23-2002)



**§ 95.06 RESTRICTIONS.**

(A) It is unlawful to offer for sale or to sell any fireworks to children under the age of 16 years of to any intoxicated person.

(B) No fireworks shall be discharged within 150 feet of any fireworks retail sales location.

(C) No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or a at or near any person or group of people.

(D) In addition to the requirements of this chapter, vendors will comply with all applicable requirements imposed under the Fireworks Licensing and Safety Act.

(Ord. 191, passed 5-23-2002) Penalty, see § 95.99

**§ 95.07 INSPECTION.**

The Fire Chief may at any reasonable hour enter and inspect the premises, portable building or any structure temporarily or permanently located at the site designated for the sale, packaging or handling of permissible fireworks and may seize non-permitted fireworks as provided in § 95.10 of this chapter.

(Ord. 191, passed 5-23-2002) Penalty, see § 95.99

**§ 95.08 PERMISSIBLE FIREWORKS.**

The following are permissible fireworks within the municipality:

(A) *Ground and hand-held sparkling and smoke devices.*

- (1) Cone fountains;
- (2) Crackling devices;
- (3) Cylindrical fountains;
- (4) Flitter sparklers;

- (5) Ground spinners;
- (6) Illuminating torches;
- (7) Toy smoke devices; and
- (8) Wheels.

(B) *Aerial devices.*

- (1) Aerial spinners;
- (2) Helicopters;
- (3) Mines;
- (4) Missile-type rockets; and
- (5) Roman candles; and
- (6) Shells.

(C) *Ground audible devices.*

- (1) Chasers; and
- (2) Firecrackers.

(Ord. 191, passed 5-23-2002) Penalty, see § 95.99

**§ 95.09 PROHIBITED FIREWORKS AND RESTRICTIONS ON SALES.**

(A) It is illegal to possess or to sell or offer to sell firework prohibited by this chapter. Stick-type rocket aerial devices are prohibited fireworks within the municipality.

(B) The public sale, within the village limits of the Village of Milan, of fireworks listed in § 95.08 above under division (B) aerial devices and division (C) ground audible devices shall be limited to a sales period from 21 days prior to the Fourth of July each calendar year until 7 days after the Fourth of July each calendar year.

(Ord. 191, passed 5-23-2002; Am. Ord. 199, passed 3-19-2003) Penalty, see § 95.99

**§ 95.10 SEIZURE OF FIREWORKS.**

(A) The Fire Chief may inspect the fireworks stands for conformance to § 95.08 and 95.09 of this chapter.

(B) The Fire Chief shall seize, take, remove or cause to be removed at the expense of the permit holder all stocks of fireworks offered or exposed for sale in violation of § 95.09 of this chapter.

(C) The Fire Chief shall seize, take, remove or cause to be removed at the expense of the person in possession, all fireworks possessed by the person in violation of § 95.09 of this chapter.  
(Ord. 191, passed 5-23-2002)

***SALE, USE AND POSSESSION OF  
FIREWORKS DURING PERIODS OF  
EXTREME OR SEVERE DROUGHT***

**§ 95.25 SHORT TITLE.**

This subchapter may be referred to as the Fireworks in Times of Drought Chapter.  
(Ord. 192, passed 5-23-2002)

**§ 95.26 PURPOSE.**

This subchapter is intended to preserve and to protect the general health, safety and welfare of the Village of Milan during periods of extreme or severe drought as proclaimed by the governing body.  
(Ord. 192, passed 5-23-2002)

**§ 95.27 JURISDICTION.**

The 1999 amendments to the Fireworks Licensing and Safety Act, NMSA §§ 60-2C-1 through 60-2C-11, 1978 authorized governing bodies of municipalities to limit and restrict the sale and use of

fireworks within the municipal boundaries of the municipality in times of extreme or severe drought. This subchapter is enacted pursuant to authority granted to the governing body by NMSA § 60-2C, 1978.  
(Ord. 192, passed 5-23-2002)

**§ 95.28 LIBERAL CONSTRUCTION.**

This subchapter, being necessary to secure the public health, safety, convenience and welfare, shall be liberally construed to effect its purpose.  
(Ord. 192, passed 5-23-2002)

**§ 95.29 EFFECTIVE DATE.**

(A) (1) This subchapter is enforceable only if the governing body issues a proclamation declaring a condition of extreme or severe drought following the procedures established in NMSA § 60-2C-8.1, 1978 and is only enforceable during the period of time in which the proclamation is in force and effect.

(2) Any dissolution or suspension of a proclamation serves to stay enforceability of this chapter and shall not operate as a repeal or suspension of the subchapter.

(B) This subchapter is in addition to and complementary with any ordinance concerning aerial devices and ground audible devices adopted in accordance with NMSA § 60-2C-7, 1978 and shall not be construed as a limitation of the terms of any ordinance concerning aerial devices and ground audible devices adopted pursuant to NMSA § 60-2C, 1978.  
(Ord. 192, passed 5-23-2002)

**§ 95.30 SEVERABILITY.**

If any section, division, sentence, paragraph, clause, word or provision of this chapter shall, for any reason, be held to be unconstitutional by a court of competent jurisdiction, the section, division, sentence,

paragraph, clause, word or provision shall not invalidate the constitutionality of the remaining portions of this chapter.

(Ord. 192, passed 5-23-2002)

**§ 95.31 SALE AND USE OF CERTAIN FIREWORKS PROHIBITED.**

(A) The sale and use within the municipal boundaries of the Village of Milan of missile-type rockets, helicopters, aerial spinners and stick-type rockets is prohibited.

(B) The sale and use within the municipal boundaries of the Village of Milan of ground devices is prohibited.

(Ord. 192, passed 5-23-2002) Penalty, see § 95.99

**§ 95.32 RESTRICTIONS ON USE OF CERTAIN FIREWORKS.**

The use of any other permitted fireworks not listed in § 95.31 of this chapter or otherwise prohibited is hereby restricted to areas within the municipal boundaries that are paved or barren or that have a readily accessible source of water for use by the homeowner or general public.

(Ord. 192, passed 5-23-2002) Penalty, see § 95.99

**§ 95.33 USE OF FIREWORKS IN WILDLANDS PROHIBITED.**

The governing body, having consulted with the state forester, declares that the use of all fireworks in areas designated by the governing body as wildlands (i.e. lands covered wholly or in part by timber, brush or native grass) is prohibited.

(Ord. 192, passed 5-23-2002) Penalty, see § 95.99

**§ 95.34 DISPLAY FIREWORKS.**

The sale or use of means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing

more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks within the municipal boundaries of the Village of Milan is prohibited.

(Ord. 192, passed 5-23-2002) Penalty, see § 95.99

**§ 95.99 PENALTY.**

(A) *Generally.* Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) *Fireworks.*

(1) Any individual, firm, partnership or corporation that violates any provision of this chapter is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or imprisonment for a period of not more than 90 days or both fine and imprisonment.

(2) In addition to any other criminal penalties that may be imposed, any individual, firm, partnership or corporation found guilty by a court of competent jurisdiction of violating this chapter or the Fireworks Licensing and Safety Act 2 or more times within a 5-year period shall, after notice and hearing, have its permit revoked for a period of 1 year.

(Ord. 191, passed 5-23-2002)



## CHAPTER 96: FLAMMABLE LIQUIDS

### Section

- 96.01 Applicability
- 96.02 Storage of all flammable and combustible liquids either above or below the ground surface
- 96.03 Application for permit to install above or underground combustible or flammable liquids
- 96.99 Penalty

### § 96.02 STORAGE OF ALL FLAMMABLE AND COMBUSTIBLE LIQUIDS EITHER ABOVE OR BELOW THE GROUND SURFACE.

(A) (1) The Village of Milan by reference hereby adopts the *Flammable and Combustible Liquids Code* (1990 Edition) published by the National Fire Protection Association in its publication numbered NFPA 30.

(2) This publication is adopted by reference and is made a part of this chapter as if fully set forth herein.

(3) This code and its provisions are to govern the activities within the jurisdictional limits of the Village of Milan as if fully set forth herein.

(B) (1) In addition the Village of Milan by reference hereby adopts the *Automotive and Marine Service Station Code* (1990 Edition) published by the National Fire Protection Association in its publication numbered NFPA 30A.

(2) This publication is adopted by reference and is made a part of this chapter as if fully set forth herein.

(3) This code and its provisions are to govern the activities within the jurisdictional limits of the Village of Milan as if fully set forth herein.

(C) The Village of Milan adopts by reference as if fully set forth all federal and state laws with reference to the storage of flammable and combustible liquids either above or below ground and by reference adopts all regulations promulgated by any federal or

### § 96.01 APPLICABILITY.

(A) This chapter is specifically applicable to the storage of above and underground combustible and flammable liquids held in containers within the jurisdictional limits of the Village of Milan. Existing plants, stores, structures, and installations for the storage of these liquids which are not in strict compliance with the terms of this chapter may be continued in use provided they do not violate any federal or state law concerning the storage of combustible and flammable liquids or violate any of the regulations of any federal or state agency who has adopted these regulations governing the storage of these liquids.

(B) When the Fire Chief or other authority having jurisdiction, deems that the continued use will constitute a distinct hazard to life or to adjoining property, and the use is in violation of current federal or state law or regulations adopted thereunder, he or she shall immediately notify the owner or operator and specify the reasons in writing. The owner or operator shall immediately correct the hazard specified. (Ord. 155, passed 4-28-1993) Penalty, see § 96.99

state agency which were adopted to enforce state or federal laws with reference to the storage of flammable and combustible liquids.  
(Ord. 155, passed 4-28-1993)

**§ 96.03 APPLICATION FOR PERMIT TO  
INSTALL ABOVE OR UNDERGROUND  
COMBUSTIBLE OR FLAMMABLE LIQUIDS.**

Before attempting to store combustible liquids covered by this chapter the owner or operator shall apply to the village for permission to store the materials. The application shall be on a form prescribed by the Village Clerk and to be available at the village offices and the application shall contain a description of the tank or installation to be used, and an accurate description of the location of the proposed tank or installation. The Village Clerk shall immediately cause the location and/or installation or tank to be inspected. If the inspection meets the standards of this chapter, a permit shall be issued for installation. As the work of installing the tank/installation progresses, the owner or operator must have all connections, pipes, electrical installations, and pumps inspected by the appropriate state and federal inspectors and also by the Fire Chief or other authorized personnel of the Village of Milan. All final inspection certificates must be presented to the Village Clerk and permission received to finally cover the tank or installation.  
(Ord. 155, passed 4-28-1993) Penalty, see § 96.99

**§ 96.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.

**TITLE XI: BUSINESS REGULATIONS**

Chapter

- 110. BUSINESS TAXES, LICENSES, FEES AND PERMITS**
- 111. PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS**
- 112. ECONOMIC DEVELOPMENT**





## CHAPTER 110: BUSINESS TAXES, LICENSES, FEES AND PERMITS

### Section

#### *Lodger's Tax*

- 110.001 Title
- 110.002 Purpose
- 110.003 Definitions
- 110.004 Imposition of tax
- 110.005 Licensing
- 110.006 Exemptions
- 110.007 Collection of tax and reporting procedures
- 110.008 Duties of the vendor
- 110.009 Failure to make return; computation; civil penalty and notice; collection of delinquencies; occupancy tax is a lien
- 110.010 Refunds and credits
- 110.011 Vendor audit
- 110.012 Confidentiality of return and audit
- 110.013 Administration of lodger's tax monies collected
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#### *Gasoline Sales Tax*

- 110.030 Definitions
- 110.031 Imposition of tax
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#### *Business License Fee*

- 110.045 Purpose
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- 110.076 Definitions
- 110.077 License; issuance
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### **LODGER'S TAX**

#### **§ 110.001 TITLE.**

This subchapter shall be known as and cited as the Lodger's Tax Subchapter.  
(Ord. 153, passed 4-28-1993)

#### **Statutory reference:**

*Lodger's Tax Act, see NMSA §§ 3-38-13 through 3-38-24*

**§ 110.002 PURPOSE.**

The purpose of this subchapter is to impose a tax which will be borne by persons using commercial lodging accommodations which tax will provide revenues for the purpose of advertising, publicizing and promoting facilities, tourist attractions, and acquisition, construction and maintenance of certain facilities, as authorized in § 110.014.

(Ord. 153, passed 4-28-1993)

**§ 110.003 DEFINITIONS.**

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

**BOARD.** The Advisory Board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

**GROSS TAXABLE RENT.** The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

**LODGING.**

(1) The transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

(2) The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

**OCCUPANCY TAX.** The tax on lodging authorized by the Lodger's Tax Act.

**PERSON.** A corporation, firm, other body corporate, partnership, association or individual, includes an executor, administrator, trustee, receiver or other representative appointed according to law and

acting in a representative capacity, but does not include the United States of America, the State of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state.

**RENT.** The consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodger's Tax Act.

**TAXABLE PREMISES.** A hotel, apartment, apartment hotel, apartment house, lodge, lodging housing, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises for lodging.

**VENDEE.** A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

**VENDOR.** A person furnishing lodgings in the exercise of the taxable service of lodging.

**VILLAGE CLERK.** The Village Clerk of Milan, New Mexico.

(Ord. 153, passed 4-28-1993)

**§ 110.004 IMPOSITION OF TAX.**

There is hereby imposed an occupancy tax of 3% of gross taxable rent for lodging within the municipality paid to vendors.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

**§ 110.005 LICENSING.**

(A) No vendor shall engage in the business of providing lodging in the Village of Milan who has first not obtained a license as provided in this section.

(B) Applicants for a vendor's license shall submit an application to the Village Clerk stating:

(1) The name of the vendor, including identification of any person, as defined in § 110.003, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;

(2) A description of the facilities, including the number of rooms and the usual schedule of rates therefor;

(3) A description of other facilities provided by a vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing and the period for which issued. If applicable, also the identification number provided by the Bureau of Revenue of the State of New Mexico;

(4) The nature of the business practices of the vendor and to what extent, if any, his or her business is exempt for the lodger's tax; and

(5) Other information reasonably necessary to effect a determination of eligibility for the license.

(C) The Village Clerk shall review applications for licenses within 10 days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodger's tax.

(D) (1) An applicant who is dissatisfied with the decision of the Village Clerk may appeal the decision to the governing body by written notice to the Village Clerk of the appeal to be made within 15 days of the

date of the decision of the Village Clerk on the application. The matter shall be referred to the governing body for a hearing at a regular or special meeting in the usual course of business.

(2) The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the Village Clerk is transmitted. The action of the governing body shall be deemed final.

(E) If the governing body finds for the applicant, the Village Clerk shall issue the appropriate license or other notice conforming to the decision made by the governing body.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

**§ 110.006 EXEMPTIONS.**

The occupancy tax shall not apply:

(A) If a vendee:

(1) Has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or

(2) Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days;

(B) If the rent paid by the vendee is less than \$2 a day;

(C) To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

(D) To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation accommodations at summer camps operated by those institutions;

(E) To clinics, hospitals or other medical facilities;

(F) To privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; or

(G) If the taxable premises does not have at least 3 rooms or 3 other units of accommodation for lodging.

(Ord. 153, passed 4-28-1993)

#### **§ 110.007 COLLECTION OF TAX AND REPORTING PROCEDURES.**

(A) Every vendor providing lodgings shall collect the tax thereon on behalf of the municipality and shall act as a trustee therefor.

(B) The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

(C) Each vendor licensed under this subchapter shall be liable to the Village of Milan for the tax provided herein on the rent paid for lodging at his or her respective place of business.

(D) Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the Village Clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodger's tax to the municipality and include sufficient information to enable the municipality to audit the reports and shall be verified on oath by the vendor.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

#### **§ 110.008 DUTIES OF THE VENDOR.**

The vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. These records shall be maintained in Milan, New Mexico, and shall be open to the inspection of the municipality during reasonable hours and shall be retained for 3 years.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

#### **§ 110.009 FAILURE TO MAKE RETURN; COMPUTATION; CIVIL PENALTY AND NOTICE; COLLECTION OF DELINQUENCIES; OCCUPANCY TAX IS A LIEN.**

(A) Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the municipality, whether due to his or her failure to collect the tax or otherwise. He or she shall be liable for the tax plus a civil penalty equal to the greater of 10% of the amount not remitted or \$100. The Village Clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.

(B) If payments are not received within 15 days of the mailing of the notice, the municipality may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding 1% a month. If the village attempts collection through an attorney or the Village Attorney for any purpose with regard to this subchapter, the vendor shall be liable to the municipality for all costs, fees paid to the attorney or Village Attorney and all other expenses incurred in connection therewith.

(C) The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in NMSA §§ 3-36-1 through 3-36-7, 1978. Priority of the lien shall be determined from the date filing.

(D) Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the Village Clerk or Treasurer the amount of any occupancy tax due the municipality. Any occupancy tax due the municipality shall be paid from the proceeds of the sale before payment is made to any judgment creditor or any other person with a claim on the proceeds of the sale.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

**§ 110.010 REFUNDS AND CREDITS.**

If any person believes he or she has made payment of any lodger's tax in excess of that for which he or she was liable, he or she may claim a refund thereof by directing to the Village Clerk, no later than 90 days from the date of payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The Village Clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to \$100 or more may be made only with the approval of the governing body.

(Ord. 153, passed 4-28-1993)

**§ 110.011 VENDOR AUDIT.**

(A) For municipalities collecting less than \$50,000 per year in occupancy tax, the governing body shall conduct random audits to verify full payment of occupancy tax receipts.

(B) The governing body shall determine each year the number of vendors within the municipality to audit.

(C) The audit(s) may be performed by the Village Clerk or by any other designee of the governing body. A copy of the audit(s) shall be filed annually with the local government division of the Department of Finance and Administration.

(Ord. 153, passed 4-28-1993)

**§ 110.012 CONFIDENTIALITY OF RETURN AND AUDIT.**

It is unlawful for any employee of the Village of Milan to reveal to any individual other than another employee of the Village of Milan any information contained in the return or audit of any taxpayer, including vendors subject to the Lodger's Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the Village of Milan is a party, and in which

information sought is material to the inquiry; to the taxpayer himself or herself or to his or her authorized representative; and in a manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

(Ord. 153, passed 4-28-1993) Penalty, see § 110.999

**§ 110.013 ADMINISTRATION OF LODGER'S TAX MONIES COLLECTED.**

The governing body shall administer the lodger's tax monies collected. The Mayor shall appoint an advisory board of 5 residents of the municipality; 2 of whom shall represent the lodging industry, 2 of whom are directly involved in tourist-related industries and 1 member at-large who shall represent the general public. The Board shall advise the governing body on expenditure of funds authorized under § 110.014 for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding area.

(Ord. 153, passed 4-28-1993)

**§ 110.014 USE OF LODGER'S TAX MONIES.**

The municipality may use the proceeds of the tax to defray the cost of:

(A) Collecting and otherwise administering the tax;

(B) Establishing and operating, constructing, purchasing, otherwise acquiring, reconstructing, extending, bettering or otherwise improving fairgrounds, exposition buildings, fieldhouses, auditoriums, welcome centers, tourist information centers, museums, performing arts facilities, in operation prior to 1-1-1989, convention halls or other convention facilities of the municipality, of the county within which the municipality is located or of the county and acquiring improvements incidental thereto;

(C) Equipping and furnishing facilities, as specified in this section, of the municipality or county;

(D) Acquiring a suitable site, grounds or other real property or any interest therein for the facilities of the municipality or county;

(E) The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by NMSA §§ 3-38-23 or 3-38-24, 1978;

(F) Advertising, publicizing and promoting the facilities of the municipality or county and tourist facilities or attractions within the area; except that a municipality located in a Class A county or a Class A county imposing an occupancy tax of more than 2% shall use not less than 1/2 of the proceeds derived from the tax for the purpose of this section; provided that this use of the proceeds of the occupancy tax shall not affect the payment of principal and interest on outstanding bonds issued prior to 7-1-1977 pursuant to NMSA §§ 3-38-23 or 3-38-24, 1978 which shall be made in accordance with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required by this division shall be reduced each year, if necessary, to make required payments of principal and interest of all outstanding bonds issued prior to 7-1-1977;

(G) Any combination of the foregoing purposes or transactions stated in this section; and

(H) Provision of public transportation within a 3-mile area of a ski lift facility, provided the ski lift facility originates inside the boundaries or within 300 feet of the boundaries of a municipality.  
(Ord. 153, passed 4-28-1993)

### ***GASOLINE SALES TAX***

#### **§ 110.030 DEFINITIONS.**

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

***DISTRIBUTOR OF GASOLINE.*** A person engaged in the business of selling gasoline or motor fuel in the Village of Milan from refineries, tank farms, tank cars, receiving tanks or station, or in or from tanks, barrels, drums, or other containers, in quantities exceeding 56 gallons in any 1 sale and delivery except persons engaged in selling exclusively in interstate commerce.

#### ***GASOLINE.***

(1) The volatile substance produced from petroleum, natural gas, oil shales or coal, heretofore sold under the name of gasoline;

(2) Any volatile substance of not less than 40° Tagliabues (Tagliabue) Baume Test, derived wholly or in part from petroleum, natural gas, oil shales or coal; or

(3) Any volatile substance of not less than 46° Tagliabues (Tagliabue) Baume Test, sold or used for generating power in internal combustion engines; provided, however, that the term ***GASOLINE*** as defined herein, shall not be construed to include any petroleum, natural gas, oil shales or coal derivative which must be further refined or processed before it can be used in internal combustion engines.

***MOTOR FUEL.*** Any volatile substance, derived or compounded wholly or in part from gasoline, petroleum, natural gas, oil shales, coal, alcohol, or other elements or substances, which is practically or commercially usable in internal combustion engines for generating power. It does not include kerosene oil or distillates, except if and when so refined or mixed with other volatile liquid or substances that the refined product or resultant mixture of compound is practically and commercially usable for generating power for propelling motor vehicles.

***RETAIL DEALER IN GASOLINE.*** A person other than a distributor of gasoline who sells gasoline or motor fuel in the Village of Milan in quantities less than 56 gallons.  
(Ord. 9, passed 6-20-1957)

**§ 110.031 IMPOSITION OF TAX.**

From and after 7-1-1957, there is hereby levied and imposed and there shall be collected from and paid by every distributor of gasoline and every retail dealer in gasoline a tax of \$.01 per gallon on each gallon of gasoline and motor fuel sold within the Village of Milan.

(Ord. 9, passed 6-20-1957) Penalty, see § 110.999

**§ 110.032 DISTRIBUTOR AND RETAIL DEALER SALES.**

Where gasoline or motor fuel is sold within the Village of Milan by a distributor of gasoline to a retail dealer in gasoline and subsequently sold within the Village of Milan by the retail dealer in gasoline to the consumer, the sale by the distributor of gasoline shall be construed as the taxable sale for the purposes of this subchapter and the subsequent sale by the retail dealer in gasoline shall not be taxed. Provided that where the sale from the distributor in gasoline to the retail dealer in gasoline takes place outside the limits of the Village of Milan, and the sale from the retail dealer in gasoline to the consumer takes place within the limits of the Village of Milan, the sale by the retail dealer within the limits of the village shall be construed as the taxable sale for the purpose of this subchapter.

(Ord. 9, passed 6-20-1957)

**§ 110.033 GASOLINE TAX COLLECTOR.**

The Mayor may appoint some person to be designated as gasoline tax collector or may designate some official or employee of the Village of Milan to act in that capacity. The gasoline tax collector shall perform any duties as may be designated by the Mayor or Board of Trustees; he or she shall receive a salary as may be fixed by the Board of Trustees and shall file a good and sufficient bond conditioned upon the faithful discharge of his or her duties in the sum as may be fixed by the Board of Trustees.

(Ord. 9, passed 6-20-1957)

**§ 110.034 REPORT BY DISTRIBUTOR AND RETAIL SALES DEALER.**

Every distributor of gasoline and retail dealer of gasoline within the Village of Milan shall, on or before the tenth day of each month make a complete report to the Village Treasurer upon forms to be furnished by the Village of Milan of all gasoline sold within the Village of Milan and shall remit to the Village Treasurer, with the report, payment to cover the tax due upon the basis as specified in this subchapter.

(Ord. 9, passed 6-20-1957) Penalty, see § 110.999

**§ 110.035 PROCEEDS OF TAX.**

The proceeds of the tax shall be placed to the credit of the gasoline tax fund by the Treasurer of the Village of Milan, and monies shall be withdrawn from the gasoline tax fund as directed by the Board of Trustees.

(Ord. 9, passed 6-20-1957)

***BUSINESS LICENSE FEE***

**§ 110.045 PURPOSE.**

It is hereby declared by the governing body of the Village of Milan, New Mexico, that the licensing and regulation of the businesses as hereinafter set forth is conducive to the promotion of the health and general welfare of the Village of Milan.

(Ord. 138, passed 2-15-1989)

**§ 110.046 LICENSE REQUIRED.**

It shall be unlawful for any person to engage in the following business, professions or trades as defined in § 110.047 within the corporate limits of the Village of Milan without first obtaining a license as resolved herein and pursuant to NMSA § 3-38-1, 1978 as amended.

(Ord. 138, passed 2-15-1989) Penalty, see § 110.999

**§ 110.047 TYPES OF BUSINESSES AND FEES.**

(A) Before conducting, operating or engaging in any business, trade or occupation within the limits of the Village of Milan, every business shall pay in advance (for each location) the respective amounts hereinafter set forth.

<i>Description</i>	<i>Annual Fee</i>
Auto salvage, junk dealers, used merchandise dealers	\$200
Amusement parks, skating rinks, billiard or pool halls, amusement or coin-operated games or devices rooms, arcades	\$150
Private detective, agency, firms	\$225

(B) For any circus, carnival or similar show, the license therefore shall be the sum of \$200 per day, provided that:

(1) Upon application for license and payment of the fee, a deposit shall also be placed with the Village Clerk in the amount of \$300 to assure that the premises and streets or alleys affected by the licensee are cleared and maintained in an orderly and clean manner, all or part of which deposit may be returned upon a finding by the Clerk, or authorized village official, of compliance with this division.

(2) It shall be a policy of the village that no more than 4 licenses shall be issued within the village limits during any 1 calendar year, not less than 60 days apart, excepting that licenses may be issued when the circus, carnival or show is in conjunction and incidental to a public event as a fair or rodeo, which license shall have precedence and priority.

(3) Neither the license fee nor the deposit shall be waived for any sponsor.

(4) If the circus, carnival or similar show shall be located outside the village limits, but any part of their operations be on or otherwise traverse, exhibit or post bills upon the streets of the village, a license

fee for the use shall be in the amount of \$100, except that where the show be located within the village limits and licensed as provided in division (B)(1), there shall be no additional charge or fee for the use of the streets.

(C) For any fortune tellers, clairvoyants, palmists, phrenologists or similar, the license therefor shall be \$150 per month, or any fraction thereof.

(D) For any bail bondsman, the license therefor shall be \$35 per year provided that:

(1) Before doing business within the Village of Milan, the applicant shall provide written proof that the applicant is authorized to write and post surety bonds in the District Courts of the Thirteenth Judicial District of the State of New Mexico. After initial approval and at the time of paying the yearly fee, the bondsman shall furnish written proof to the Village Clerk that he or she continues to be authorized to write and post surety bonds in the District Courts of the Thirteenth Judicial District of the State of New Mexico.

(2) The form of surety bond to be used by the bail bondsman in the Municipal Court of the Village of Milan shall be a form approved by and used in the District Courts of the Thirteenth Judicial District of the State of New Mexico.

(E) Prior to engaging in any of the businesses heretofore enumerated in divisions (A) through (D) above, the application shall be subject to review by the Chief of Police of the Village of Milan, and upon review and approval, the Village Clerk may issue the license. Failure to pay any fee when due, or to observe requirements of the Chief of Police in approving the application, shall be cause to revoke the license.

(F) The license fee for non-resident itinerant solicitors, operators, soliciting applications for insurance, sales of real estate, sales of merchandise, machines or equipment, laundering or dry cleaning, installing, serving and providing sales of merchandise



or articles through coin operated vending machines, conducting public dances or exhibitions, not otherwise included and incidental to a resident licenses business, or subject to any other specified provision of this subchapter, shall be in the amount of \$15 per day; provided that any person, solicitor or operator may secure an annual license by applying for one and paying a fee of \$75.

(G) Any business, trade, service or pursuit not specifically provided for in this subchapter, or any other ordinance or chapter of the Village of Milan shall apply for the license and pay a fee of \$5 per day, or for an annual business registration fee of \$35. (Ord. 138, passed 2-15-1989) Penalty, see § 110.999

**§ 110.048 APPLICATION.**

(A) Applicants for licenses under this subchapter must file with the Village Clerk a sworn application in writing, on a form to be furnished by the Village Clerk, which shall include, but is not limited to the following information:

(1) Name;

(2) Address;

(3) Current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number;

(4) A brief description of the nature of the business;

(5) Proof of insurance coverage (when applicable); and

(6) Specific requirements for the classification enumerated.

(B) Issuance of the license does not permit or sanction any violation or avoidance of village ordinances and regulations, including, but not limited to, building codes, zoning, utility delinquencies and rules. (Ord. 138, passed 2-15-1989) Penalty, see § 110.999

**§ 110.049 BUSINESS LICENSE FEES; ASSESSMENT; ISSUANCE OF LICENSE.**

(A) On or before 3-16-1989, all businesses engaging in a type of business enumerated under § 110.048 of this subchapter shall apply for a business license for that year and include payment with the application.

(B) Upon payment of the business license fee, the Clerk shall issue a business license to the applicant.

(C) Any business may protest the business license fee assessment by filing a written protest with the Village Clerk on or before 3-16-1989. The Board of Trustees shall give the protesting business no less than 5-days' notice of a hearing at which time the protest shall be heard by the Board.

(D) Any business, which must have a business license per this subchapter, and which begins operation after March 16 of the calendar year, shall apply to the Village Clerk for a business license prior to engaging in business. The amount of the license fee shall be prorated based on the number of days during the year when the business is conducted except that businesses subject to a daily license fee shall pay the fee for the number of days during which business is conducted and the fee shall be paid in advance, except that the minimum shall be not less than \$35.

(E) In any case where a person, firm or corporation is required to obtain a license for any calling, occupation, profession, business or vocation, and has been adjudged guilty of violating any village ordinance in relation thereto, or when as in the judgement of the Village of Milan Board of Trustees the public welfare shall require, the license so granted may be revoked; but no license shall be revoked without first giving the licensee an opportunity to be heard by the Board.

(Ord. 138, passed 2-15-1989) Penalty, see § 110.999

**§ 110.050 COLLECTION AND ENFORCEMENT.**

The village may also initiate collection and enforcement procedures as are outlined in NMSA §§ 3-38-1 through 3-38-6 of Chapter 3, Article 38 NMSA 1978.

(Ord. 138, passed 2-15-1989)

***BUSINESS REGISTRATION FEE*****§ 110.060 IMPOSITION OF BUSINESS REGISTRATION FEE.**

There is imposed on each place of business conducted in this municipality a business registration fee of \$35. The fee is imposed pursuant to NMSA § 3-38-3, 1978 as it now exists or is amended and shall be known as the business registration fee. The business registration fee may not be prorated for businesses conducted for a portion of the year.

(Ord. 139, passed 2-15-1989)

**§ 110.061 EXEMPTION.**

No business registration fee shall be imposed on any business which is licensed under §§ 110.045 *et seq.*, pursuant to NMSA § 3-38-1, 1978.

(Ord. 139, passed 2-15-1989)

**§ 110.062 APPLICATION TO DO BUSINESS.**

Any person proposing to engage in business within the municipal limits of Milan shall apply for and pay a business registration fee for each outlet, branch location within the municipal limits of Milan prior to engaging in business unless the person is required to obtain a business license fee under §§ 110.045 *et seq.*

(Ord. 139, passed 2-15-1989) Penalty, see § 110.999

**§ 110.063 RENEWAL.**

Prior to March 16 of each year, any person with a place of business in Milan and subject to this subchapter shall apply for renewal of business registration with the Village Clerk.

(Ord. 139, passed 2-15-1989) Penalty, see § 110.999

**§ 110.064 APPLICATION.**

Any person filing an application for issuance or renewal of any business registration shall include in the application his or her current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number, upon a form prescribed by the village. The application, payment and registration does not permit or sanction any violation or avoidance of village ordinances, regulations, including, but not limited to, building codes, zoning, utility delinquencies and rules.

(Ord. 139, passed 2-15-1989)

**§ 110.065 COLLECTION AND ENFORCEMENT.**

The village may also initiate collection and enforcement procedures as are outlined in NMSA §§ 3-38-1 through 3-38-6 of Chapter 3, Article 38 NMSA 1978.

(Ord. 139, passed 2-15-1989)

***LIQUOR LICENSE FEE*****§ 110.075 LICENSE REQUIRED.**

It shall be unlawful for any person, firm or corporation to engage in the sale of alcoholic liquors within the village limits of the Village of Milan without first obtaining a license for the same approved by the Board of Trustees.

(Ord. 5, passed 5-2-1957)

**§ 110.076 DEFINITIONS.**

Definitions for the purpose of this subchapter shall be the same as those defined in NMSA § 60-3A-3.

(Ord. 5, passed 5-2-1957)

**§ 110.077 LICENSE; ISSUANCE.**

(A) *Issuance.* All persons or clubs shall comply with the alcoholic liquor laws of the state in applying for a license from the village.

(B) *License fee.* The fees for issuing a license shall be set from time to time by the Village Board of Trustees.

(Ord. 5, passed 5-2-1957; Am. Ord. 18, passed 5-27-1958; Am. Ord. 79, passed 4-21-1977) Penalty, see § 110.999

**§ 110.078 BUSINESS HOURS.**

The hours of business of liquor establishments shall be in accordance with the law of the State of New Mexico.

(Ord. 5, passed 5-2-1957) Penalty, see § 110.999

**§ 110.999 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



## CHAPTER 111: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

### Section

- 111.01 Definitions
- 111.02 License requirement
- 111.03 Application procedure
- 111.04 Standards for issuance
- 111.05 Revocation procedure
- 111.06 Standards for revocation
- 111.07 Appeal procedure
- 111.08 Exhibition of identification
- 111.09 Village policy on soliciting
- 111.10 Notice regulating soliciting
- 111.11 Duty of solicitors to ascertain notice
- 111.12 Prohibited solicitation

**PEDDLER.** Any person, not an itinerant merchant, who:

(1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Without traveling from place to place, sells or offers goods for sale from any public place within the village.

**SOLICITOR.** Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

### § 111.01 DEFINITIONS.

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

**BUSINESS.** The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

**GOODS.** Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

**ITINERANT MERCHANT.** Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the village and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the village.

### § 111.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the village.

(B) The fee for the license required by this chapter shall be as set from time to time by the Village Board of Trustees.

(C) No license issued under this chapter shall be transferable.

(D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof. Penalty, see § 10.99

**§ 111.03 APPLICATION PROCEDURE.**

(A) All applicants for licenses required by this chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

- (1) The name and address of the applicant;
- (2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the village;
- (b) The local address of such individual;
- (c) The permanent address of such individual;
- (d) The capacity in which such individual will act;
- (3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;
- (4) The time period or periods during which it is proposed to carry on applicant's business;
- (5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;
- (b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;
- (c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;
- (6) The nature of the advertising proposed to be done for the business;

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

- (1) A description of the applicant;
  - (2) A description of any vehicle proposed to be used in the business, including its registration number, if any.
- (C) All applicants for licenses required by this chapter shall attach to their application, if required by the village, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.  
Penalty, see § 10.99

**§ 111.04 STANDARDS FOR ISSUANCE.**

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant:

- (1) Has been convicted of a crime of moral turpitude; or

(2) Has made willful misstatements in the application; or

(3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or

(4) Has committed prior fraudulent acts; or

(5) Has a record of continual breaches of solicited contracts.

will constitute valid reasons for disapproval of an application.

**§ 111.05 REVOCATION PROCEDURE.**

Any license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 111.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

**§ 111.06 STANDARDS FOR REVOCATION.**

A license granted under this chapter may be revoked for any of the following reasons:

(A) Any fraud or misrepresentation contained in the license application; or

(B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or

(C) Any violation of this chapter; or

(D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or

(E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

**§ 111.07 APPEAL PROCEDURE.**

(A) Any person aggrieved by a decision under §§ 111.04 or 111.06 shall have the right to appeal to the Village Board of Trustees. The appeal shall be taken by filing with the Village Board of Trustees, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The Village Board of Trustees shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 111.05.

(B) The order of the Village Board of Trustees after the hearing shall be final.

**§ 111.08 EXHIBITION OF IDENTIFICATION.**

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the village shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

Penalty, see § 10.99

**§ 111.09 VILLAGE POLICY ON SOLICITING.**

It is hereby declared to be the policy of the village that the occupants of the residences in the village shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

**§ 111.10 NOTICE REGULATING SOLICITING.**

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

**NO SOLICITORS INVITED**

(B) The letters shall be at least 1/3 inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

**§ 111.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.**

(A) It shall be the duty of every solicitor upon going onto any premises in the village upon which a residence is located to first examine the notice provided for in § 111.10 if any is attached, and be governed by the statement contained on the notice. If the notice states **NO SOLICITORS INVITED**, then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.  
Penalty, see § 10.99

**§ 111.12 PROHIBITED SOLICITATION.**

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 111.10 above.

Penalty, see § 10.99



**CHAPTER 112: ECONOMIC DEVELOPMENT**

Section

*General Provisions*

- 112.01 Plan
- 112.02 Adoption

*Economic Development Plan*

- 112.15 Economic development and community development goals and priorities
- 112.16 Types of qualifying entities and economic activities that will qualify for economic development projects
- 112.17 Eligibility determination of an economic development project and a qualifying entity to participate in an economic development project
- 112.18 Required information
- 112.19 Processing application
- 112.20 Methods for termination of economic assistance
- 112.21 Resources
- 112.22 Minimum benefit
- 112.23 Safeguards if public resources
- 112.24 Project participation agreement

**GENERAL PROVISIONS**

**§ 112.01 PLAN.**

The Board of Trustees has reviewed the plan and has determined that the plan complies with the requirements of the Local Economic Development Act (NMSA §§ 5-10-1 to 5-10-13, 1978) and that adoption of the plan is in the best interests of the Village of Milan.  
(Ord. 180, passed 7-29-1998)

**§ 112.02 ADOPTION.**

The plan is hereby adopted and approved. The officers of the village shall take action as is necessary under the plan to effectuate its provisions.  
(Ord. 180, passed 7-29-1998)

**ECONOMIC DEVELOPMENT PLAN**

**§ 112.15 ECONOMIC DEVELOPMENT AND COMMUNITY DEVELOPMENT GOALS AND PRIORITIES.**

(A) *Key objectives.*

(1) *Unemployment.*

(a) To reduce unemployment;

(b) To retain or re-employ the local labor force; and

(c) To create jobs.

(2) *Diversification.* To diversify and expand the economic base.

(3) *Labor force.*

(a) To improve the quality of our labor force; and

(b) To retain more of the local youth population.

(4) *Quality of life.*

(a) To develop and optimize the quality of life in our community; and

(b) To improve the aesthetics of our community.

(B) *Key objectives generally.*

(1) Unemployment and diversification concerns can be addressed through recruitment and retention and expansion and business development while quality of labor force and quality of life issues can be addressed through community development.

(2) Therefore, 4 overlying objectives must be accomplished to address the issues at hand. They are:

- (a) Recruitment;
- (b) Retention and expansion;
- (c) Business development; and
- (d) Community development.

(C) *Methods for achieving key objectives.*(1) *Recruitment.*

(a) *Target SIC codes specific to our area.*

(b) *Provision of incentives.*

1. When feasible and within the provisions of the New Mexico Local Economic Development Act, use public funds, land, buildings or other infrastructure to assist in the recruitment of industry that would create jobs.

2. Utilize area revolving loan funds for working capital which can be made available for various economic development projects as an incentive.

3. Utilize state incentives available to enhance the development of business and/or industry and the creation of jobs.

(c) *Technical assistance.* Utilize local, regional and state technical assistance programs to enhance the development, relocation or expansion of business/industry and the creation of jobs.

(d) *Financing.* Utilize resources available in the financing for the development, relocation or expansion of business/industry and the creation of jobs.

(e) *Existing real estate and industrial park utilization.* Strategic marketing of existing real estate including the industrial park for appropriate business attraction.

(2) *Retention and expansion.*

(a) *Retention and expansion program.* Utilize the retention and expansion program to assist in retaining and expanding local businesses.

(b) *Provision of incentives.*

1. When feasible and within the provisions of the New Mexico Local Economic Development Act, use public funds, land, buildings or other infrastructure to assist in the retention and expansion of industry that would create jobs.

2. Utilize area revolving loan funds for working capital which can be made available for various economic development projects as an incentive.

3. Utilize state incentives available to enhance the development of business and/or industry and the creation of jobs.

(c) *Technical assistance.* Utilize local, regional and state technical assistance programs to enhance the development, relocation or expansion of business/industry and the creation of jobs.

(d) *Financing.* Utilize resources available in the financing for the development, relocation or expansion of business/industry and the creation of jobs.

(e) *Existing real estate and industrial park utilization.* Strategic marketing of existing real estate including the industrial park for appropriate business attraction.

(3) *Business development.*

(a) *Provisions of incentives.*

1. When feasible and within the provisions of the New Mexico Local Economic Development Act, use public funds, land, buildings or other infrastructure to assist in business development that would create jobs.

2. Utilize area revolving loan funds for working capital which can be made available for various economic development projects as an incentive.

3. Utilize state incentives available to enhance the development of business and/or industry and the creation of jobs.

(b) *Technical assistance.* Utilize local, regional and state technical assistance programs to enhance the development, relocation or expansion of business/industry and the creation of jobs.

(c) *Financing.* Utilize resources available in the financing for the development, relocation or expansion of business/industry and the creation of jobs.

(d) *Existing real estate and industrial park utilization.* Strategic marketing of existing real estate including the industrial park for appropriate business attraction.

(4) *Community development.* Current projects that will enhance economic development include but are not limited to:

(a) *Future Foundations Family Center.*

This facility will greatly enhance the quality of life opportunities in the area. It will provide youth and family counseling and some job opportunities while also serving as a recreational facility.

(b) *New hospital/expanded medical services.* The expansion of medical services in the area will provide job opportunities and also enhance the ancillary medical specialties that the region will have to offer.

(c) *Mainstreet.* This program is concerned with revitalization and beautification of the mainstreet/downtown area.

(d) *School-to-work.* Implement a school-to-work program to improve the quality of the labor force.

(e) *Vocational training program.* Develop and implement within the community's resources the best possible vocational and other skill training to prepare the local populace to enter the work force.

(f) *New recreation facility.* This 3,000 square foot facility will greatly enhance the quality of life opportunities in Milan and surrounding areas.

(g) *Milan sewer line extension.* This extension of the current main sewer line in Milan will serve outlying areas.

(Ord. 180, passed 7-29-1998)

**§ 112.16 TYPES OF QUALIFYING ENTITIES AND ECONOMIC ACTIVITIES THAT WILL QUALIFY FOR ECONOMIC DEVELOPMENT PROJECTS.**

(A) As defined in the Local Economic Development Act, NMSA § 5-10-3, 1978, as amended, *QUALIFYING ENTITY* means a corporation, limited liability company, partnership,

joint venture, syndicate, association or other person that is 1 or a combination of 2 or more of the following:

(1) An industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in division (5) below, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in division (5) below, not including businesses primarily engaged in the sale of goods or commodities at retail;

(4) An Indian tribe or pueblo or a federally chartered tribal corporation; or

(5) A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico.

(B) Any entity meeting the qualifying entity definition set forth above may propose an economic development project to the governing body. Meeting the definition of a qualifying entity does not create any obligation on the part of the governing body.

(C) Application for economic development projects requesting economic assistance from the governing body which may receive priority include, but are not limited to:

(1) Manufacturing firms (including intellectual property such as computer software);

(2) Projects which enhance the exporting capacity of companies and/or provide goods and services which currently have to be imported into the community;

(3) Private companies seeking to build, expand or relocate facilities;

(4) Private companies which provide facilities or services which enhance the ability of local businesses to operate;

(5) (a) Organizations which assist business start-ups or bring small companies together to increase their competitive abilities.

(b) This must involve a tangible project which will create jobs and promote an industry.

(c) Examples include, but are not limited to:

1. Business incubators;

2. Art incubators or coalitions;

3. Public markets for farmers, gardeners, crafts and the like;

4. Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs; and

5. Organizations which foster economic development; and

(6) Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well.

(D) ***ECONOMIC DEVELOPMENT PROJECT*** means the provision of direct or indirect assistance to a qualifying entity by a local or regional government, and includes the purchase, lease, grant, construction,

reconstruction, improvement or other acquisition or conveyance of land, building or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project. (Ord. 180, passed 7-29-1998)

**§ 112.17 ELIGIBILITY DETERMINATION OF AN ECONOMIC DEVELOPMENT PROJECT AND A QUALIFYING ENTITY TO PARTICIPATE IN AN ECONOMIC DEVELOPMENT PROJECT.**

(A) In order to be considered for community assistance an applicant must first meet the qualifying entity criteria as defined in the Local Economic Development Act, NMSA § 5-10-3G, 1978, as amended, also this section of this plan.

(B) As defined in the Local Economic Development Act, NMSA § 5-10-9, 1978:

(1) The local or regional government shall review each project application, and projects shall be approved by ordinance;

(2) The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application; and

(3) The local or regional government may negotiate with a qualifying business on the type or amount of assistance to be provided or on the scope of the economic development project.

(C) In order to determine eligibility other than qualifying entity, the local or regional government may require a contribution from the qualifying entity for each economic development project. The contributions may include but are not limited to:

- (1) Positive effect on tax base;
- (2) Responds to the local labor force through training and the creation of jobs;
- (3) Wage range - offers a variety of wages for employees;
- (4) Brings an investment into the community which offers a good public to private relationship;
- (5) In-kind services; and
- (6) Indication of track record for reliability and viability.

(D) Each applicant will be screened individually for qualifications needed to participate in an economic development project. This individuality allows each industry or business to qualify under the various line items to the capacity of that industry or business. (Ord. 180, passed 7-29-1998)

**§ 112.18 REQUIRED INFORMATION.**

Information required for an applicant to be considered for assistance the following will include but is not limited to the following:

(A) Information concerning the company.

- (1) What business it is in; and
- (2) How long it has been in business.

(B) Information concerning the proposed project.

- (1) Brief description;
- (2) Why the business is expanding or starting up;
- (3) What the timing is for the project.

## (C) Capital and borrowing requirements.

- (1) Source of funds;
- (2) Available equity; and
- (3) Is there a bank willing to participate?

## (D) Project costs and use of funds.

## (E) Basic financial information. Three years financials (audited if available).

- (1) Balance sheet;
- (2) Profit and loss statement; and
- (3) Cash flow statement.

## (F) Other company information.

- (1) Number of employees now and with expansion;
- (2) Estimation of wages of employees now and with expansion;
- (3) Estimate of how many employees will be derived from locality; and
- (4) Ownership/management. Background of principles/management.

## (G) Compatibility with the economic development goals of the governmental entity.

## (H) Other information required or deemed pertinent by the government entity or the reviewing agency.

## (I) If feasible, a plant or site tour of existing operation.

## (J) Other information deemed pertinent to the project.

(Ord. 180, passed 7-29-1998)

## § 112.19 PROCESSING APPLICATION.

(A) *Economic development review committee.*

(1) An economic development review committee shall be responsible for reviewing and making recommendations to the governing body on applications for assistance for economic development projects.

(2) The economic development review committee shall be composed of 7 members qualified by training, experience and ability to exercise sound and practical judgment on civic, social, economic and governmental affairs. The committee shall be composed of the following:

(a) The Executive Director of the Cibola Communities Economic Development Foundation;

(b) The Director of the NMSU-Grants Small Business Development Center;

(c) The Executive Director of the Cibola County Chamber of Commerce;

(d) The Mayor or chief administrative officer of the Village of Milan;

(e) A member of the financial community appointed by the chief elected official with the advice consent of a majority vote of all the members of the governing body;

(f) A member of the educational community appointed by the chief elected official with the advice and consent of a majority vote of all the members of the governing body; and

(g) A member of the community appointed by the chief elected official with the advice and consent of a majority vote of all the members of the governing body. Applications will be accepted for this position.

(3) Of the 3 members appointed to the economic development review commission, 1 shall have a 1-year term and 2 shall have 2-year terms. Each subsequent term of a member shall be for 2 years to maintain the original staggering of terms of membership. There shall be no limitation of the number of consecutive terms a member may serve on the economic development review commission.

(B) *Verification process.* Due diligence will be used to verify all facts about the business seeking assistance including but not limited to:

(1) The review of information required in §§ 112.17 and 112.18 of this plan;

(2) The verification of financial data required in § 112.18 of this plan will include but is not limited to:

(a) Requesting data from the bank and other financial institutions that may have had previous dealing(s) with the business seeking assistance or its principals;

(b) Involving the bank or other financial institutions that may have been or are involved in the project;

(c) Obtain the release of IRS actual tax records in order to verify with financials; and

(d) Review of information pertaining to any other borrowing by the business or its principals that might affect the businesses ability to repay debt or fulfill other obligation, if any.

(3) Investigation to determine the validity of any claims to patent rights, trade secrets and the like. (Ord. 180, passed 7-29-1998)

#### **§ 112.20 METHODS FOR TERMINATION OF ECONOMIC ASSISTANCE.**

The governing body may terminate or amend the economic development plan, any ordinances, and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance

at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. (Ord. 180, passed 7-29-1998)

#### **§ 112.21 RESOURCES.**

(A) Each of the entities in Cibola County, have a variety of resources to offer qualifying businesses.

(B) Community assistance under the Local Economic Development Act may include:

(1) The sale, lease or grant of government owned land or other property in return for pledges to provide new jobs and increase the tax base;

(2) It may be taken into consideration to build and lease, sell or grant a facility in return for new jobs and an increase in the tax-base;

(3) Infrastructure development may be provided in return for pledges to provide new jobs and increase the tax base; and

(4) The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, § 14 of the Constitution of New Mexico and the Local Economic Development Act shall not exceed 5% of the general fund expenditures of the local government in that fiscal year. The value of any land or building contributed to any project pursuant to a project participation agreement shall not be subject to the limits of the division. (Ord. 180, passed 7-29-1998)

**§ 112.22 MINIMUM BENEFIT.**

(A) The minimum benefit the local or regional government requires from a qualifying entity will be to foster the community in achieving its 4 goals as stated in § 112.15 of this chapter.

(B) (1) The criteria in which a project will be funded has been covered in §§ 112.17 through 112.22 of this chapter.

(2) Each applicant will be screened individually for qualifications needed to participate in an economic development project.

(3) This individuality allows each industry or business to qualify under various criteria to the capacity of that industry or business.  
(Ord. 180, passed 7-29-1998)

**§ 112.23 SAFEGUARDS IF PUBLIC RESOURCES.**

(A) All economic development projects receiving assistance from the village shall be subject to an annual performance review by the economic development review committee.

(B) Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of project participation agreement, the local or regional government retains the right to deny any and all assignment, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee assignee or lessee. At its discretion, the local or regional government may choose to deny the assignment, lease or transfer or may negotiate a new agreement with the new operator, or the village may reclaim the facility and enter into agreement with a new qualifying entity.

(C) Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a number of years as set forth in the project

participation agreement from the date the ordinance adopting the project participation agreement is passed by the governing body.  
(Ord. 180, passed 7-29-1998)

**§ 112.24 PROJECT PARTICIPATION AGREEMENT.**

(A) The qualifying entity shall prepare with the local or regional government a project participation agreement. This agreement is the formal document which states the contributions and obligation of all parties in the economic development project. The agreement must clearly state the following terms:

(1) The economic development goals of the project;

(2) The contributions of the local or regional government and the qualifying entity;

(3) The specific measurable objectives upon which the performance review will be based;

(4) A schedule for project development and goal attainment;

(5) The security being offered for the local or regional government's investment;

(6) The procedure by which a project may be terminated and the local or regional government's investment recovered; and

(7) The time period for which the village shall retain an interest in the project. Each project agreement shall have a sunset clause after which the village shall relinquish interest in and oversight of the project.

(B) Each project participation agreement shall be adopted as an ordinance and adopted by the governing body at a public hearing.  
(Ord. 180, passed 7-29-1998)



**TITLE XIII: GENERAL OFFENSES**

**Chapter**

- 130. GENERAL PROVISIONS**
- 131. PUBLIC ORDER AND SAFETY**
- 132. PROPERTY**
- 133. PUBLIC MORALS**
- 134. MINORS**
- 135. NUISANCES**



## CHAPTER 130: GENERAL PROVISIONS

### Section

- 130.01 Title
- 130.02 Definitions and rules of construction
- 130.03 Amendments

#### § 130.01 TITLE.

This title (Chapters 130 through 135) is called and may be cited as the Criminal Code on General Offenses for the municipality of Village of Milan. (Ord. 99, passed 6-17-1980)

#### § 130.02 DEFINITIONS AND RULES OF CONSTRUCTION.

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

**ACCUSED.** Any person charged with the violation of any ordinance of the municipality that imposes a penalty.

**ANOTHER or OTHER.** Any other human being or legal entity, whether incorporated or unincorporated, including the United States, the State of New Mexico or any subdivision thereof.

**ANYTHING OF VALUE.** Any conceivable thing of the slightest value, tangible or intangible, movable or immovable, corporeal or incorporeal, public or private. The term is not necessarily synonymous with the traditional legal term **PROPERTY**.

**BATTERY.** The unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

**BET.** A bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. A **BET** does not include:

(1) Bonafide business transactions which are valid under the laws of contracts, including, without limitation:

(a) Contracts for the purchase or sale, at a future date, of securities or other commodities; and

(b) Agreements to compensate for loss caused by the happening of chance, including, without limitation, contracts for indemnity or guarantee and life and health and accident insurance;

(2) Offers of purses, prizes or premiums to the actual contestants in any bonafide contest for the determination of skill, speed, strength or endurance or to the bonafide owners of animal or vehicles entered in a contest;

(3) A **LOTTERY** which is defined as an enterprise wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. As used in this title, **CONSIDERATION** means anything of pecuniary value required to be paid to the promoter in order to participate on an enterprise; or

(4) **BETTING** otherwise permitted by law.

**CARRYING A DEADLY WEAPON.** Being armed with a deadly weapon by having it on the person, or inclose proximity thereto, so that the weapon is readily accessible for use.

**DEFENDANT.** Any person accused of a violation of any ordinance of the municipality that imposes a penalty.

**DISORDERLY CONDUCT.** Engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace, or maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any persons.

**GOVERNING BODY.** The City Council or City Commission of a city, the Board of Trustees of a town or village.

**HE, HIM, SHE or HER.** Shall not be construed to be mandatory distinctions of gender if not expressly stipulated.

**LAWFUL CUSTODY or CONFINEMENT.** The holding of any person pursuant to lawful authority, including, without limitation, actual or constructive custody of prisoners temporarily outside a penal institution, reformatory, jail, prison farm or ranch.

**MAYOR.** The chief executive officer of municipalities having the Mayor-Council form of government.

**MINOR.** Any unmarried person who has not reached his or her eighteenth birthday, except that under the application of the Alcohol Beverage Control Act, or alcohol-related division of this title, **MINOR** means any person under 21 years of age.

**MUNICIPALITY.** Any incorporated city, town or village, whether incorporated under general act, special act or special charter.

**OFFICIAL PROCEEDING.** A proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in any proceeding.

**PERSON.** Any human being or legal entity, whether incorporated or unincorporated.

**POLICE OFFICER, LAW ENFORCEMENT OFFICER, PEACE OFFICER or OFFICER.** Any public official or public officer vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

**PROSTITUTION.** Knowingly engaging in or offering to engage in sexual intercourse for hire.

**PUBLIC EMPLOYEE.** Any person receiving remuneration for regular services rendered to the state or any of its political subdivisions.

**PUBLIC GROUND.** Any real property owned or leased by a municipality.

**PUBLIC OFFICER.** Any elected or appointed officer of the state or any of its political subdivisions, serving with or without remuneration for his or her services.

**SHALL.** Is mandatory and **MAY** is permissive.

**STREET.** Any thoroughfare that can accommodate pedestrian or vehicular traffic, is open to the public and is under the control of the municipality.

(Ord. 99, passed 6-17-1980)

#### § 130.03 AMENDMENTS.

Any amendments to this title shall be adopted as ordinances as required by state law, and when passed in a form as to indicate the intention to make the same a part thereof, shall be incorporated into this title so that reference to it as the Criminal Code on General Offenses, shall be understood as including these amendments.

(Ord. 99, passed 6-17-1980)

## CHAPTER 131: PUBLIC ORDER AND SAFETY

### Section

- 131.01 Assault
- 131.02 Battery
- 131.03 Aggravated battery
- 131.04 Trespass
- 131.05 Prowling
- 131.06 Disturbing the peace
- 131.07 Unreasonable noise
- 131.08 Disorderly conduct
- 131.09 Unlawful assembly
- 131.10 Vagrancy
- 131.11 Obstructing movement
- 131.12 Removal of barricades
- 131.13 Deadly weapons
- 131.14 Failure to report treatment of wounds
- 131.15 Propelling of missiles
- 131.16 Possession of fireworks
- 131.17 False alarms
- 131.18 False reports
- 131.19 Interference with officers
- 131.20 Impersonating an officer
- 131.21 Assault upon peace officer
- 131.22 Unauthorized use of certain words  
and insignia
  
- 131.99 Penalty

### § 131.01 ASSAULT.

It is unlawful for any person to commit a battery upon the person of another, nor shall any person, by any unlawful act, threat or menacing conduct, cause another person to believe he or she is in danger of receiving an immediate battery, nor shall any person, by the use of insulting language toward another, impugn his or her honor, delicacy or reputation.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

### § 131.02 BATTERY.

It is unlawful for any person to beat, strike, wound, inflict violence or apply force to the person of another, nor shall a person intentionally touch or apply force to the person of another in a rude, insolent, angry or hostile manner except in connection with an exhibition duly authorized and licensed under law, or in lawful self defense, or in the line of duty as a duly authorized police officer as circumstances warrant.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

### § 131.03 AGGRAVATED BATTERY.

It is unlawful for any person to commit aggravated battery upon the person of another, nor shall any person unlawfully touch or apply force to the person of another with intent to injure that person or another, or inflict an injury to the person which is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

### § 131.04 TRESPASS.

It is unlawful to enter or remain, with malicious intent, on the property of another knowing that consent to enter or remain has been denied or withdrawn by the owner or occupant thereof.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

**§ 131.05 PROWLING.**

It is unlawful for any person to loiter or prowl in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether the alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him or her to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

**§ 131.06 DISTURBING THE PEACE.**

It is unlawful for any person to disturb or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit the conduct upon any property owned by him or her or under his or her control or supervision.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

**§ 131.07 UNREASONABLE NOISE.**

(A) It is unlawful for any person to make, continue or cause to be made, any loud or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

(B) Unlawful noises include but shall not be limited to the following.

(1) *Horns and signal devices.* The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle on any street or public place except as a danger warning, the creation by means of any signaling devices of any unreasonable, loud, or harsh sound, the sounding of the devices for any unnecessary and unreasonable period of time other than by accident or mechanical, electrical or other difficulty or failure, and the use of any signaling device where traffic is held up.

(2) *Radios and phonographs.* The use or operation of any radio, phonograph or other sound producing machine in a manner as to disturb the peace and quiet of neighbors.

(3) *Loud-speakers and amplifiers used for advertising.* The use or operation or permitting to be played, used or operated any radio, receiver set, musical instrument, phonograph, tape recorder, loud-speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public in any residential area except with the proper permit elsewhere prescribed.

(4) *Yelling or shouting.* Yelling, shouting or creating other loud noises which annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel or residence, or of any persons in the vicinity.

(5) *Animals.* The keeping of any animals which, by causing frequent or long continuous noise, shall disturb the comfort or repose of any persons of the vicinity.

(6) *Schools, courts, churches, hospitals.* The creating of any excessive noise on any street adjacent to any hospital, school, institution of learning, church or court which interferes with the workings of that institution, or which disturbs or annoys patients in a hospital.

(7) *Pounding*. The pounding or hammering on any metal object or thing except inside a building or in connection with the construction or erection of a building.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

§ 131.08 DISORDERLY CONDUCT.

(A) Disorderly conduct is unlawful.

(B) A person is guilty of disorderly conduct if he or she:

(1) Creates a disturbance of the public order by an act of violence or by any act likely to produce violence;

(2) Engages in fighting, or in violent, threatening or tumultuous behavior;

(3) Makes any unreasonably loud noise;

(4) Addresses abusive language or threats to any person present which creates a clear and present danger of violence;

(5) Causes likelihood of harm or serious inconvenience by failing to obey a lawful order of dispersal by a police officer, where 3 or more persons are committing acts of disorderly conduct in the immediate vicinity;

(6) Damages, befouls or disturbs public property or property of another so as to create a hazardous, unhealthy or physically offensive condition;

(7) (a) Commits a trespass on residential property or on public property.

(b) *TRESPASS* for the purpose of this chapter shall mean:

1. Entering upon, or refusing to leave, any residential property of another, either where the property has been posted with "No Trespassing" signs, or where immediately prior to the

entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that the entry, or continued presence, is prohibited.

2. Entering upon, or refusing to leave, any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning property, where the regulations have been conspicuously posted or where immediately prior to entry, or subsequent thereto, the regulations are made known by the official charged with the security, care or maintenance of the property, his or her agent or a police officer.

(8) Makes a telephone call with intent to annoy another, whether or not conversation ensues;

(9) Assembles together with 2 or more persons with intent to do any unlawful act with force or violence against the person or property of another, and who makes any overt act to carry out the unlawful purpose; or

(10) Disturbs, threatens, or in any insolent manner intentionally touches any house or vehicle occupied by any person.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

§ 131.09 UNLAWFUL ASSEMBLY.

It is unlawful for 3 or more persons to assemble with intent to do any unlawful act by force or violence against the person or property of another and to make any overt act to carry out an unlawful purpose.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

§ 131.10 VAGRANCY.

The following acts comprise the crime of vagrancy and their commission is unlawful:

(A) Waiting or remaining within a public, private or parochial school building or upon school grounds, not having any reason or relationship

involving custody of or responsibility for a student, without the written permission of a school official, or in violation of posted rules or regulations;

(B) Occupying, lodging or sleeping in any vacant or unoccupied barn, house, car, shed, shop or other building or structure or in any automobile, truck, railroad car or other vehicle without owning the same or without the permission of the owner or person entitled to possession thereof or sleeping in any vacant lot; or

(C) Begging from door to door to private houses or commercial business establishments or placing oneself in or upon any public way or public place to beg.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.11 OBSTRUCTING MOVEMENT.

It is unlawful to hinder, annoy or molest persons passing along any street, sidewalk, crosswalk or other public way, or to lie, sit or stand around the entrance of any church, theater, public building or other place of public assemblage in any manner so as to unreasonably obstruct the entrance or to place or erect upon any public way an obstruction of any type except temporary barriers or warning signs placed for the purpose of safeguarding the public against any hazard. (Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.12 REMOVAL OF BARRICADES.

It is unlawful to remove, destroy or interfere with any barrier, guard or light placed before or in any dangerous place near the streets, sidewalks or other public ways of the village for the purpose of warning or protecting travelers from injury or danger, provided that removal after the danger has ceased and temporary removal to allow the passage of a vehicle with immediate subsequent replacement shall not be considered unlawful.

(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.13 DEADLY WEAPONS.

(A) *Carrying of deadly weapons.* It is unlawful to carry within the municipality a concealed, loaded firearm or other weapon capable of producing death or great bodily harm including, but not restricted to, any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives, chains, can openers, ice picks, and all weapons with which dangerous cuts or punctures can be inflicted, including swordcanes and any kind of sharp pointed canes, also slingshots, bludgeons or any other weapon with which dangerous wounds can be inflicted.

(B) *Discharge of firearms.* It is unlawful to discharge within the municipality limits any pistol, revolver, rifle or shotgun which may be used for the explosion of cartridges, or any gas-operated gun or any device used for propelling missiles, or any slingshot or missile propelling device, or any bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever, whether any instrument is called by any name set forth above or by any other name; provided that this section has no application in cases involving the discharge of a firearm for lawful purposes.

(C) *Air and B-B guns.* It is unlawful for anyone to shoot within the municipality any air rifle, air gun or B-B gun. Parents who permit the violation of this section shall be deemed guilty of a violation of § 134.07.

(D) *Exceptions.* The provisions in this section shall not apply in the following cases:

(1) In the person's residence or on real property belonging to him or her as owner, lessee, tenant or licensee;

(2) In a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property;

(3) By a peace officer in accordance with the policies of his or her law enforcement agency who is certified pursuant to the Law Enforcement Training Act (NMSA § 29-7-1, 1978);



(4) By a peace officer in accordance with the policies of his or her law enforcement agency who is employed on a temporary basis by that agency and who has successfully completed a course of firearms instruction prescribed by the New Mexico law enforcement academy or provided by a certified firearms instructor who is employed on a permanent basis by a law enforcement agency; or

(5) By a person in possession of a valid concealed handgun license issued to him or her by the department of public safety pursuant to the provisions of the Concealed Handgun Carry Act (NMSA § 29-19-1, 1978).

(E) *Exposing others to danger.* It is unlawful to endanger the safety of another or his or her property by using a firearm or other deadly weapon in a negligent manner or to carry a firearm while under the influence of any intoxicant or narcotic, or to sell, loan or furnish any deadly weapon to persons under the influence of any intoxicant or narcotic or to any incompetent person.

(F) *Prohibited weapons.* It is unlawful to manufacture, cause to be manufactured, possess, display, offer, sell or lend any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device or any knife having a blade which opens, falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement.

(G) *Sales to minors.* It is unlawful to give, sell, trade, barter or exchange for anything of value any deadly weapon, air rifle, air gun or B-B gun, or ammunition for any firearm to any person under the age of 18 years provided that this section shall not be construed to prevent any parent or legal guardian from purchasing firearms or ammunition for his or her child or ward.

(H) *Disposition of seized weapons.* Every police officer upon making an arrest and taking a weapon used in the violation of any section of this code shall deliver the same to the Chief of Police to be held by

him or her until judgment is entered for the offense and upon the finding of guilt the weapon shall be disposed of as provided in NMSA § 29-1-14, 1978. (Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.14 FAILURE TO REPORT TREATMENT OF WOUNDS.

It is unlawful for any physician, surgeon or other practitioner of the healing arts licensed by the State of New Mexico to fail to immediately report to the municipal police department his or her treatment of any person in the municipality for a wound inflicted by a deadly weapon of any kind. (Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.15 PROPELLING OF MISSILES.

It is unlawful for any person to shoot, sling or throw any stone, rock or other propellant, missile or substance in any manner as to be reasonably likely to cause injury to any person or property. (Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.16 POSSESSION OF FIREWORKS.

(A) *Unlawful acts.* It is unlawful to manufacture, sell, offer to sell, own, possess or discharge any firecracker, Roman candle, sky rocket, torpedo, bomb, blank cartridges or any other type or form of explosive commonly known as fireworks within the municipal limits unless the State Fire Marshal has declared that the item is not dangerous to persons or property.

(B) *Exclusions.* The term *FIREWORKS* shall not include toy pistols, toy canes, toy guns or other devices in which paper caps containing 25/100 grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistols which contain less than 20/100 grains of explosive mixture, the sale and use of which shall be permitted at all times.

(C) *Public display.* Nothing herein contained shall be held to apply to or prohibit any municipal or civic organization from sponsoring and conducting, in connection with any public celebration, an officially supervised and controlled fireworks display.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.17 FALSE ALARMS.

It is unlawful for any person to make, turn in or give a false alarm of fire or of need for police or ambulance assistance, or to interfere with the proper functioning of an alarm system, or to aid or abet the commission of an act.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.18 FALSE REPORTS.

It is unlawful for any person to maliciously make or file with the Police Department any false, misleading or unfounded report or statement concerning the commission or alleged commission of any crime.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.19 INTERFERENCE WITH OFFICERS.

It is unlawful to resist, abuse, molest, hinder, obstruct or refuse to obey or assist when called upon to do so, any police officer, fireman, emergency medical personnel or judge while in the discharge of his or her duty.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.20 IMPERSONATING AN OFFICER.

It is unlawful for any person other than a duly commissioned police officer to wear or carry the uniform, apparel, badge, identification card or other insignia of office, the same, similar or a colorable imitation of that adopted and worn or carried by duly commissioned police officers, unless acting in the

course of regular business and with the permission of the municipality, or, without authority, to exercise or attempt to exercise the functions of, or pretend to be, a peace officer or judge.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.21 ASSAULT UPON PEACE OFFICER.

(A) It is unlawful for any person to commit an assault upon a peace officer.

(B) Assault upon a peace officer consists of:

(1) An attempt to commit a battery upon the person of a peace officer while he or she is in the lawful discharge of his or her duties; or

(2) Any unlawful act, threat or menacing conduct which causes a peace officer while he or she is in the lawful discharge of his or her duties to reasonably believe that he or she is in danger of receiving an immediate battery.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.22 UNAUTHORIZED USE OF CERTAIN WORDS AND INSIGNIA.

It is unlawful to display on any vehicle or sign, without authority of the municipality, the words "police," "police department," "fire department" or words or insignia of similar import, whose design or form is so that it appears to be an official vehicle or sign of the fire or police department of the municipality, provided that nothing contained herein shall apply to any state or county vehicle.  
(Ord. 99, passed 6-17-1980) Penalty, see § 131.99

#### § 131.99 PENALTY.

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.

## CHAPTER 132: PROPERTY

### Section

- 132.01 Destroying, injuring, removing, tampering with or defacing property
- 132.02 Library property
- 132.03 Scattering trash or rubbish
- 132.04 Advertising matter
- 132.05 Petty larceny, conversion, embezzlement, fraud
- 132.06 Receiving stolen property
- 132.07 Shoplifting
- 132.08 Issuing worthless checks
- 132.09 Falsely obtaining services or accommodations
- 132.10 Wrongful use of public property
- 132.11 Removal of earth
  
- 132.99 Penalty

### **§ 132.01 DESTROYING, INJURING, REMOVING, TAMPERING WITH OR DEFACING PROPERTY.**

It is unlawful for any person to willfully, maliciously or wantonly destroy, injure, remove, tamper with or deface real property or improvements thereto or personal property, either public or private. (Ord. 99, passed 6-17-1980) Penalty, see § 132.99

### **§ 132.02 LIBRARY PROPERTY.**

It is unlawful for any person to carry away without authority, misuse, cut, write upon, injure, deface, tear or destroy any book, periodical, map, newspaper or any other property devoted to public library use. (Ord. 99, passed 6-17-1980) Penalty, see § 132.99

### **§ 132.03 SCATTERING TRASH OR RUBBISH.**

It is unlawful for any person to throw or permit to be deposited or scattered upon any sidewalk, alley, street or public property or upon the private property of another, any rubbish, waste, trash or other disposed material of any kind.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

### **§ 132.04 ADVERTISING MATTER.**

(A) It is unlawful for any person to distribute any commercial advertising such as showcards, posters, brochures, circulars or handbills upon any public street or way.

(B) It is unlawful for any person to distribute, place or post in or upon any private property, including utility poles, any showcard, poster, handbill or other announcement or advertisement without the express consent of the owner or occupant of the property.

(C) It is unlawful for any person to post or affix any poster, handbill or other form of advertisement upon the surface of any public structure or building without the express consent of the public official having charge of the public structure or property. (Ord. 99, passed 6-17-1980) Penalty, see § 132.99

### **§ 132.05 PETTY LARCENY, CONVERSION, EMBEZZLEMENT, FRAUD.**

It is unlawful for any person to steal, convert, embezzle or acquire by fraud the property of another including any money, goods, chattels, bank notes, bonds, promissory notes, bills of exchange, other

bills, orders, certificates or any books of account for or concerning money due or to become due and to be delivered. If the property stolen, converted, embezzled or acquired by fraud exceeds the value of \$100, the matter shall be referred to the district attorney.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

#### **§ 132.06 RECEIVING STOLEN PROPERTY.**

It is unlawful to buy, procure, receive or conceal anything of value knowing the same to have been stolen, converted, embezzled or acquired by fraud.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

#### **§ 132.07 SHOPLIFTING.**

It is unlawful for any person to willfully take possession of or conceal any merchandise valued at not more than \$100 offered for sale with the intention of converting it without paying for it or to willfully alter any label, price tag or marking upon any merchandise, or transfer any merchandise from one container to another with the intention of depriving the merchant of all or part of the value of the merchandise. Any person who willfully conceals merchandise on his or her person or on the person of another or among his or her belongings or the belongings of another or on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found to be concealed on any person or among his or her belongings it shall be prima facie evidence of willful concealment. Any offense concerning merchandise valued at more than \$100 shall be turned over to a higher authority.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

#### **§ 132.08 ISSUING WORTHLESS CHECKS.**

It is unlawful to issue in exchange for anything of value with intent to defraud any check, draft or order for the payment of money in the amount of \$1 to \$25 upon any bank or other depository knowing at the time of the issue that insufficient funds or credit exists with

the bank or other depository for the payment in full by check, draft or order. Any person convicted of issuing worthless checks shall be imprisoned for not more than 30 days or fined not more than \$100 or receive both the imprisonment and fine. Offense of issuance of fraudulent check in excess of \$25 shall be turned over to a higher authority.

(Ord. 99, passed 6-17-1980)

#### **§ 132.09 FALSELY OBTAINING SERVICES OR ACCOMMODATIONS.**

It is unlawful for any person to falsely obtain services or accommodations, or for any person to obtain any service, food, entertainment or accommodations without paying therefor, and with the intent to cheat or defraud the owner or person supplying the service, food, entertainment or accommodations. Any offense concerning falsely obtaining services or accommodations when the value of the service, food, entertainment or accommodations in excess of \$100 shall be turned over to a higher authority.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

#### **§ 132.10 WRONGFUL USE OF PUBLIC PROPERTY.**

It is unlawful for any person to commit unlawful use of public property by knowingly entering any public property without permission of the lawful custodian or his or her representative when the public property is not open to the public, or remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his or her representative, who has determined that the public property is being used or occupied contrary to its intended or customary use or that the public property may be damaged or destroyed by the use.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

**§ 132.11 REMOVAL OF EARTH.**

It is unlawful for any unauthorized person to move, distribute or take away any earth, stone or other material from any public street, way, alley, park or public ground.

(Ord. 99, passed 6-17-1980) Penalty, see § 132.99

**§ 132.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



## CHAPTER 133: PUBLIC MORALS

### Section

- 133.01 Lewd, immoral or obscene acts
- 133.02 Window peeping
- 133.03 Gambling
- 133.04 Aiding illegal activity
- 133.05 Marijuana, possession prohibited
- 133.06 Glue; aerosol spray; abuse or possession for abuse
  
- 133.99 Penalty

### § 133.01 LEWD, IMMORAL OR OBSCENE ACTS.

The following acts are lewd, immoral, or obscene and their commission is unlawful:

(A) Being present in any establishment where alcoholic beverages are sold and engaging in the practice of or for the purpose of soliciting others to purchase alcoholic beverages, provided that this provision does not apply to one employed as a bartender, waitress or waiter;

(B) As the owner or operator of any establishment where alcoholic beverages are sold, to knowingly permit the presence in the establishment of any person who violates the provisions of division (A) above;

(C) Prostitution, which means knowingly engaging in or offering to engage in sexual intercourse for hire;

(D) Entering or remaining in a house of prostitution with intent to engage in sexual intercourse with a prostitute;

(E) Knowingly hiring a prostitute to engage in sexual intercourse;

(F) Knowingly establishing, owning, maintaining or managing a house of prostitution or participating in the establishment, ownership, maintenance or management thereof;

(G) Knowingly permitting any place to be used as a house of prostitution;

(H) Procuring a prostitute for a house of prostitution;

(I) Inducing another to become a prostitute;

(J) Living wholly or partly upon the earnings of prostitution;

(K) Knowingly soliciting a patron for a prostitute or for a house of prostitution;

(L) Knowingly procuring a prostitute for a patron;

(M) Knowingly procuring transportation for, paying for the transportation of, or transporting a person within the municipality with the intention of aiding that person to engage in prostitution;

(N) Knowingly being employed by a house of prostitution or to perform any function which constitutes promoting prostitution; and

(O) Knowingly and intentionally exposing the primary genital area to public view. Primary genital area means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

(Ord. 99, passed 6-17-1980) Penalty, see § 133.99

**§ 133.02 WINDOW PEEPING.**

It is unlawful for any person to enter upon any private property and look, peer, or peep into or be found around or within the view of any window or other means of viewing into any occupied building, other than his or her own residence, with the intent of observing a person or persons undressed, dressing or undressing or engaging in sexual acts.

(Ord. 99, passed 6-17-1980) Penalty, see § 133.99

**§ 133.03 GAMBLING.**

(A) *Engaging in gambling.* It is unlawful for any person to make a bet, enter or remain in a gambling place with intent to make a bet, participate in a lottery or play a gambling device or to conduct a lottery or possess facilities with intent to conduct a lottery.

(B) *Commercial gambling.* It is unlawful to participate in the earnings of or to operate a gambling place; or to receive, record, forward or possess facilities with the intent to receive or forward bets or offers to bet or become a custodian of anything of value bet or offered to be bet; or to conduct a lottery or possess facilities with the intent to conduct a lottery where both the consideration and the prize are money; or to set up for use for the purpose of gambling, or operate any gambling device or collect the profits therefrom.

(C) *Permitting use of premises.* It is unlawful for any person to knowingly permit any property owned or occupied by him or her or under his or her control to be used as a gambling place or to knowingly permit a gambling device to be set up for the purpose of gambling in a place under his or her control.

(D) *Dealing in gambling devices.* It is unlawful to manufacture, commercially transfer or possess with the intent to commercially transfer any device which he or she knows evidences, purports to evidence or is designed to evidence a gambling purpose or any device which he or she knows is designed exclusively as a subassembly or essential part of the device including, but not limited to gambling machines, numbers, jars, punch boards or roulette wheels.

Proof of possession of any device designed exclusively for gambling purposes other than in a gambling place and not set up for use is prima facie evidence of possession with intent to transfer commercially.

(E) *Permitted lottery.* Nothing in this section shall be construed to apply to any sale or drawing of any prize at any fair held in this state for the benefit of any church, public library or religious society if the benefit shall be expended in this state for the benefit of the church, public library, religious society or charitable purposes. A lottery may be operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go into the organization for charitable purposes and no part of the proceeds go to any individual member or employee thereof.

(F) *Motion picture theater.* Nothing in this section shall be held to prohibit any motion picture theater from offering prizes of cash or merchandise for advertising purposes in connection with the business whether or not any consideration other than monetary in excess of the regular price of admission is exacted for participation in drawings for prizes.

(G) *On-track pari-mutuel betting.* Nothing in this section shall be construed to prohibit on-track pari-mutuel betting as authorized by NMSA § 60-1-11, 1978.

(Ord. 99, passed 6-17-1980) Penalty, see § 133.99

**§ 133.04 AIDING ILLEGAL ACTIVITY.**

It is unlawful to be found in any place where gambling or prostitution is being conducted with knowledge of the activity or to give or attempt to give any signal intended to give warning of the approach of any police officer to any person in or about any place where any illegal activity is being conducted.

(Ord. 99, passed 6-17-1980) Penalty, see § 133.99



**§ 133.05 MARIJUANA, POSSESSION PROHIBITED.**

(A) It is unlawful for any person intentionally to possess marijuana unless it was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by law.

(B) *MARIJUANA* means all parts of the plant *Cannabis sativa L.*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(C) *PRACTITIONER* means a physician, dentist, veterinarian or other person licensed to prescribe and administer drugs which are subject to the Controlled Substance Act of New Mexico, being NMSA §§ 30-31-1 through 30-31-41, 1978. (Ord. 99, passed 6-17-1980) Penalty, see § 133.99

**§ 133.06 GLUE; AEROSOL SPRAY; ABUSE OR POSSESSION FOR ABUSE.**

(A) No person shall intentionally smell, sniff or inhale the fumes or vapors from a glue, aerosol spray product or other chemical substance for the purpose of causing a condition of inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses, or for the purpose of in any manner changing, distorting or disturbing the audio, visual or mental processes.

(B) No person shall intentionally possess a glue, aerosol spray product or other chemical substances for any purpose set forth in division (A) above of this section.

(C) As used in this section, *GLUE* means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

(D) The provisions of this section do not apply to any aerosol spray product or other chemical substance used for legitimate medicinal purposes and obtained either on a prescription basis or for medicinal purposes by a person over the age of 18.

(Ord. 135, passed 4-20-1988) Penalty, see § 133.99

**§ 133.99 PENALTY.**

(A) *Generally.* Any person found guilty of violating any of the provisions of this chapter shall be fined not more than \$300 or imprisoned for a period of not more than 90 days, or by both a fine and imprisonment, and each day this chapter is violated shall constitute a separate offense; provided, however, that if a specific penalty is provided therefore in any particular and individual section of this chapter, then the specific penalty shall prevail.

(B) *Marijuana; possession prohibited.*

(1) Any person found guilty of violating § 133.05 with respect to 1 ounce or less of marijuana shall be punished by a fine not less than \$50 nor more than \$100 and by imprisonment for not more than 15 days.

(2) Second and subsequent offenses, and possession of more than 1 ounce of marijuana shall be turned over to a higher jurisdiction.

(C) *Glue; aerosol spray; abuse or possession for abuse.*

(1) Any person found guilty of violating § 133.06 shall be punished by a fine not less than \$50 or more than \$100 or imprisoned as allowed by law.

(2) The sentence or fine may be waived in the discretion of the court in the case of any person who has not been previously convicted of violating this section and who has successfully completed a drug education or treatment program approved by the court.

(D) *Collection of fees.*

(1) Any person convicted under §§ 133.05 or 133.06 shall be assessed, in addition to any other fee or fine, a fee of \$25 to defray the costs of chemical and other analyses of controlled substances.

(2) The Village Court shall collect the above referred to fee pursuant to division (D)(1) above and shall transmit the monies so collected to the administrative offices of the courts pursuant to NMSA § 31-12-9, 1978.

(Ord. 99, passed 6-17-1980; Am. Ord. 135, passed 4-20-1988)

## CHAPTER 134: MINORS

### Section

#### *General Provisions*

- 134.01 Abandonment of children
- 134.02 Cruelty to children
- 134.03 Enticement of child
- 134.04 Unlawful assistance to minors
- 134.05 Unlawful presence in liquor establishments
- 134.06 Offenses by minors
- 134.07 Failure of parental responsibility
- 134.08 Abandonment of dangerous objects
- 134.09 Sale, offer for sale, delivery or gift of certain glues

#### *Possession of Alcohol by a Minor*

- 134.20 Definitions
- 134.21 Prohibition
  
- 134.99 Penalty

#### **GENERAL PROVISIONS**

##### **§ 134.01 ABANDONMENT OF CHILDREN.**

It is unlawful for the parent, guardian or custodian of a child to intentionally leave the child or abandon him or her under the circumstances whereby the child may suffer from neglect.  
(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

##### **§ 134.02 CRUELTY TO CHILDREN.**

It is unlawful for any parent, guardian or other person having the care or custody of any child to cause or permit any child to be placed in a situation where the life or health of the child will be endangered, or to torture, cruelly confine or cruelly punish the child or to willfully or negligently expose the child to the inclemency of the weather.  
(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

##### **§ 134.03 ENTICEMENT OF CHILD.**

It is unlawful to persuade any child under the age of 16 years to enter a vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code (NMSA §§ 30-9-1 to 30-9-19, 1978) or having possession of a child under the age of 16 years to commit a crime.  
(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

##### **§ 134.04 UNLAWFUL ASSISTANCE TO MINORS.**

It is unlawful to assist minors to buy, procure, obtain, or be served any alcoholic beverages or to induce any person to sell, serve or deliver any alcoholic beverage to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts which are calculated to cause the person selling, serving or delivering the alcoholic beverages to sell to a minor or to any person for ultimate delivery to a minor.  
(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

### § 134.05 UNLAWFUL PRESENCE IN LIQUOR ESTABLISHMENTS.

It is unlawful for the owner or operator of any establishment serving alcoholic beverages to permit any person under the age of 21 years to attend, work in, frequent or loiter in or about the premises unless the person is accompanied by his or her parent or guardian.

(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

### § 134.06 OFFENSES BY MINORS.

(A) *Curfew.* It is unlawful for any person under the age of 18 years to loiter, idle, wander, stroll or play in or upon the public streets, highways, alleys, parks, playgrounds, other public places or buildings, or vacant lots between the hours of 10:30 p.m. and 4:00 a.m. provided, however, that this section shall not apply to a minor accompanied by a parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business directed by persons having the care or custody of him or her.

(B) *False statement or identification.* It is unlawful for any minor to make false statements or to furnish, present or exhibit any fictitious or false registration card, identification card or other instrument, or to furnish, present or exhibit any document issued to another person, for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift or delivery of prohibited articles including, but not limited to alcoholic beverages.

(C) *Procuring unlawful services.* It is unlawful for any minor to engage or authorize the services of any other person to procure for the minor any article which the minor is prohibited by law to purchase. (Ord. 99, passed 6-17-1980)

(D) *Exceptions.* This section does not apply to a minor who is:

(1) Accompanied by the minor's parent or guardian;

(2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(3) In a motor vehicle involved in interstate travel;

(4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(5) Involved in an emergency;

(6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;

(8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(9) Married or had been married or had disabilities of minority removed in accordance with state law.

Penalty, see § 134.99

### § 134.07 FAILURE OF PARENTAL RESPONSIBILITY.

It is unlawful for any parent, guardian or other adult person having the care and custody of a minor to knowingly permit the minor to violate the provisions of §§ 131.13(C), 134.04, 134.05, or 134.06.

(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

**§ 134.08 ABANDONMENT OF DANGEROUS OBJECTS.**

(A) *Containers.* It is unlawful to abandon, discard or keep in any place accessible to children any refrigerator, icebox, freezer, air-tight container, cabinet or similar container of a capacity of 1-1/2 cubic feet or more which is no longer in use without sealing or removing the doors or other entrances so as to make it impossible for any child to be imprisoned therein, or being the owner, lessee or operator of any premises to permit these articles to remain upon the premises in a condition whereby a child may be imprisoned therein.

(B) *Plastic bags.* It is unlawful for any person to abandon, expose, leave in any place accessible to children or permit upon premises under his or her control any plastic bag without first tearing the same sufficiently to render it no longer dangerous to a child. (Ord. 99, passed 6-17-1980) Penalty, see § 134.99

**§ 134.09 SALE, OFFER FOR SALE, DELIVERY OR GIFT OF CERTAIN GLUES.**

(A) *Prohibited conveyance.* It is unlawful to sell, offer for sale, deliver or give to any person under the age of 18 years any glue or cement commonly known as model airplane glue, plastic cement, household cement, cement or any other similar substance, if the glue, cement or substance contains one or more of the following volatile solvents: hexane, benzene, toluol, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol, methylcellosolve acetate, trichloromethane or ether.

(B) *Exception.* The provisions of division (A) above shall not apply when the glue or cement is sold, delivered or given simultaneously with and as part of

a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models.

(Ord. 99, passed 6-17-1980) Penalty, see § 134.99

*Cross-reference:*

*Glue; aerosol spray; abuse or possession for abuse, see § 133.06*

**POSSESSION OF ALCOHOL BY A MINOR**

**§ 134.20 DEFINITIONS.**

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

**ADULT.** Any person 21 years of age, or older.

**ALCOHOLIC LIQUORS.** Includes any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters bearing the Federal Internal Revenue Strip Stamps or any similar alcoholic beverages, including all blended or fermented beverages, dilutions or mixtures of 1 or more than 1/2 of 1 % alcohol, but excluding medicinal bitters.

**MINOR.** Any person under 21 years of age. (Ord. 52, passed 2-8-1967)

**§ 134.21 PROHIBITION.**

It shall be unlawful and a misdemeanor for a minor, except in the actual, visible and personal presence of the parent, guardian or spouse of the minor, or the adult person into whose custody the minor has been committed for the time by any court, to have alcoholic liquor in the possession of the minor.

(Ord. 52, passed 2-8-1967)

**§ 134.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.

## CHAPTER 135: NUISANCES

### Section

- 135.01 Public nuisance
- 135.02 Nuisance declared
- 135.03 Notice of nuisance
- 135.04 Complaint
- 135.05 Removal of nuisance
- 135.06 Injunctions

- 135.99 Penalty

#### *Cross-reference:*

*Abandoned or unsafe buildings, see Chapter 91*

### § 135.01 PUBLIC NUISANCE.

It is unlawful to commit a public nuisance. Public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: injurious to public health, safety, morals or welfare; or interferes with the exercise and enjoyment of public rights including the right to use public property. (Ord. 99, passed 6-17-1980) Penalty, see § 135.99

### § 135.02 NUISANCE DECLARED.

(A) In the interest of the inhabitants of the municipality, it is necessary to prohibit the accumulation of junk, trash and refuse on property within the corporate limits of the municipality by declaring the accumulation a nuisance.

(B) The following are hereby declared to be a public nuisance.

(1) *Unoccupied premises.* It shall be unlawful for any reason for any person to sweep, place or throw, solid waste or other waste materials in or upon any sidewalk, street, alley or unoccupied premises.

(2) *Unsanitary premises.* It shall be unlawful for any person to permit or cause to remain in or about his or her premises any solid waste, weeds, motor vehicles not in operating condition, wastewater or any conglomeration of residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents; and which in the opinion of the Sanitation Officer is unsanitary, or injurious to public health. The accumulation of building materials, pipes, lumber or boxes may be maintained on the premises if the accumulation is evenly piled and stacked for a reasonable length of time to be determined by the Sanitation Officer.

(3) *Hazardous premises.* It shall be unlawful for any person to permit in or about his or her premises weeds, briars, brush or any other solid waste to become in any way hazardous or injurious to public health or to obstruct pedestrian and vehicular traffic.

(4) *Accumulation of solid waste.*

(a) It shall be unlawful for any person to allow any solid waste to accumulate upon premises, owned, leased, rented or occupied by him or her during intervals between collection thereof, except in the manner herein provided.

(b) It shall be unlawful to deposit any solid waste in or upon the streets, alleys, sidewalks, gutters, curbing, storm sewers, parkways or vacant lots within the municipality, except in the manner and in the receptacles or container as provided in division (B)(5) below.

(5) *Solid waste receptacles.* All solid waste receptacles shall be maintained in a clean and sanitary condition by the owner or person using the receptacle and the receptacles shall be located only in places as shall be readily accessible for removing and emptying the same, but shall not be placed in a place or position as may constitute a nuisance or obstruction to vehicular or pedestrian traffic.

(6) *Outdoor vehicle storage; prohibited acts; exceptions.*

(a) *Generally.* It is unlawful for any person, firm, or corporation to store on, place on, or permit to be stored or placed on, or allowed to remain on any occupied or unoccupied land within the municipal limits, a dismantled, partially dismantled or inoperative motor vehicle, or any parts of a motor vehicle, except in areas where the activity is within the contemplated purposes of duly licensed businesses and are kept in a wholly enclosed garage or structure.

(b) *Exceptions.* Any person, being owner or tenant, may store, permit to be stored or allow to remain upon his or her premises, any dismantled, partially dismantled or inoperative motor vehicle, or parts thereof, for a period not to exceed 1 week if the motor vehicle is registered in his or her name; and provided further that any owner or tenant may, in the event of hardship, secure permission from the municipality to extend the period of time.

(c) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***DISMANTLED*** or ***PARTIALLY DISMANTLED VEHICLE.*** Any motor vehicle from which some part or parts which are ordinarily a component thereof have been removed or are missing.

***INOPERATIVE*** or ***INOPERABLE MOTOR VEHICLE.*** Any motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

***MOTOR VEHICLE.*** Any wheeled vehicle which is self-propelled or intended to be self-propelled.

(d) *Supplementary.* This section shall be construed as being supplementary to any sections of this chapter relating to rubbish, litter, refuse, and shall not be construed to permit the parking or placing of dismantled, partially dismantled or inoperable motor vehicles on any public street.  
(Ord. 99, passed 6-17-1980) Penalty, see § 135.99

#### § 135.03 NOTICE OF NUISANCE.

Any municipal police officer, upon observing any violation of this chapter, shall issue a notice directed to the owner of record of the property on which the nuisance occur, or to the occupant or tenant of the property, or both. The notice shall describe the violation and shall establish a reasonable time limit for abatement thereof by the owner or occupant or tenants, which limit shall be not less than 2 days or more than 30 days after service of the notice. The notice may be served either personally or by registered mail at the owner's or occupant's last known address.

(Ord. 99, passed 6-17-1980)

#### § 135.04 COMPLAINT.

In the event the owner or occupant of the property where the nuisance violation of this chapter exists, has failed, within the prescribed time, to abate the nuisance, then any municipal police officer, shall file a complaint charging violation of this chapter with the municipal court demanding that the owner of the property, or the occupant thereof, or both, be held to answer to the court for the violation of this chapter.  
(Ord. 99, passed 6-17-1980) Penalty, see § 135.99



**§ 135.05 REMOVAL OF NUISANCE.**

In the event that a person is convicted of violating this chapter and still refuses to remove the junk trash or refuse, the municipality may enforce this section in any manner consistent with law. Should the person refuse or fail to pay the assessment, the municipality shall collect the assessment as provided by law.

(Ord. 99, passed 6-17-1980)

**§ 135.06 INJUNCTIONS.**

The Chief of Police, when a nuisance exists as set forth in this chapter, may maintain a complaint in the name of the municipality, perpetually, to enjoin all persons from maintaining or permitting the nuisance and to abate the same.

(Ord. 99, passed 6-17-1980)

**§ 135.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



**TITLE XV: LAND USAGE**

**Chapter**

- 150. BUILDINGS**
- 151. FLOOD DAMAGE PREVENTION**
- 152. FLOOD HAZARD PREVENTION**
- 153. PLANNING AND ZONING**



## CHAPTER 150: BUILDINGS

### Section

#### *Moving of Buildings*

- 150.01 Approval of route
- 150.02 Warning signs or lights
- 150.03 Interference with or removal of wires, cables, trees and the like
- 150.04 Liability for damages, injuries and the like
- 150.05 Business registration required
- 150.06 Issuance
- 150.07 Bond
- 150.08 Permit required
- 150.09 Application
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- 150.11 Restriction on issuance
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#### *Address Assignment and Posting*

- 150.25 Short title
- 150.26 Purpose
- 150.27 Assignment
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- 150.29 Posting
- 150.30 Maintenance
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#### *MOVING OF BUILDINGS*

##### **§ 150.01 APPROVAL OF ROUTE.**

Any person intending to move a house, building or structure or part thereof as a unit and not dismantled, from 1 location to another within the corporate limits, or from within the corporate limits to outside the corporate limits, in, over and by means of streets, alleys or public ways of the village shall make application to the Village Clerk to designate and approve a route to be used for the proposed movement calculated to afford the least obstruction to traffic and within minimal hazard to life and limb.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

##### **§ 150.02 WARNING SIGNS OR LIGHTS.**

Any person engaged in the business of moving structures, or parts thereof, from one location to another on the streets, alleys or public ways of the village shall, whenever a street or alley is blocked by a house or other structure which is being moved, place warning signs to that effect, so as to warn vehicles and persons from entering that portion of the street so blocked. Warning signs or lanterns or lights shall be placed at night on or near any structure being moved in order to prevent any person or vehicle from colliding with it.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.03 INTERFERENCE WITH OR REMOVAL OF WIRES, CABLES, TREES AND THE LIKE.**

(A) Whenever it shall be necessary to interfere with or remove any wires, cables or other property of a public utility, the person moving a structure through the village streets shall first notify the public service company, telephone company, telegraph company, gas company or any other public utility owning the property to be interfered with or removed so that the same may be properly removed or cared for. The owner of the structure being moved shall bear sole cost and expense of the removal, replacement or repair, if any.

(B) Whenever it shall be necessary to interfere with or remove any wires, cables or other property of the village, the person moving the building or structure through the village streets shall first notify the Village Clerk of the interference or removal, so that the same may be properly removed or cared for. The owner of the structure being so moved shall bear the sole cost and expense of the removal, replacement or repair.

(C) Whenever it shall be necessary to interfere with or remove any trees, shrubs or other property of whatsoever kind or nature of any person other than that of a public utility or the village, the person moving the building or structure through the village streets shall notify the owner of the property and first obtain the owner's permission for the interference or removal. The owner of the building or structure being so moved shall bear the sole cost and expense of the removal, replacement or repair.

(D) Nothing in any permit or registration issued or granted under this subchapter shall be construed as authorizing the holder thereof to break, injure or remove any telephone, telegraph or electric light poles, lines, wires or cables, or in any way injure trees or other property of any owner thereof.  
(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.04 LIABILITY FOR DAMAGES, INJURIES AND THE LIKE.**

Any person issued a business registration or permit under the provisions of this subchapter shall be responsible and liable to the village for any damage or injury caused to its property by the moving or by any acts in connection with the moving of a structure. The failure of any person to adjust any damage to the village or to any of the inhabitants thereof shall result in the vesting in the governing body the right to cancel the registration of the person, together with the right to refuse the issuance of any future registration or permit under this subchapter to the person, when the contemplated moving is to be done by a party failing to comply with the provisions of this subchapter.  
(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.05 BUSINESS REGISTRATION REQUIRED.**

All persons or entities conducting the business of removing structures or parts thereof from one location to another using the streets, alleys or public ways of the village shall obtain a business registration from the Village of Milan each year.  
(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.06 ISSUANCE.**

Upon compliance with the provisions of this subchapter and the payment of the fee required by any Village of Milan ordinance, the business registration shall be issued by the village.  
(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.07 BOND.**

Prior to the issuance of the business registration required by §§ 150.05 and 150.06, the applicant shall file with the Village of Milan a bond, payable to the village in the sum of \$2,000 in the form and with the sureties as shall be approved by the Village Clerk,

conditioned upon the applicant's compliance with the requirements of all ordinances of the village which are pertinent to the business of moving buildings, and further conditioned upon the applicant's repairing and making good to the satisfaction of the village, any damages to any pavement, hydrant, street, alley or property which may be caused by the moving of the building or structure, and further conditioned upon applicant indemnifying and saving harmless the village against all liability for damages, costs or expenses arising in any manner in favor of any person by reason of the moving by the applicant of any building or structure.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.08 PERMIT REQUIRED.**

Any person owning any structure in excess of 16 feet in width and 30 feet in length, which is intended to be moved upon the streets, alleys or other public ways of the village shall first obtain a permit from the Village of Milan.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.09 APPLICATION.**

An application for a permit for the moving of any structure shall be filed with the Village Clerk. The application shall show, in connection with the structure to be moved, its construction at the present time, its present use and location, and its new location, together with a diagram of the lot to which the structure is intended to be moved, if within the village limits of the Village of Milan, showing the existence of other buildings thereon, the substructure upon which it is intended to be placed, its intended use for the future at the new location, the route, streets to be traversed in the moving thereof, the length of time required for the moving, and the name of a properly registered person contracting to move the building or structure.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.10 CONDITIONS.**

(A) A permit issued pursuant to the provisions of §§ 150.08 and 150.09 shall require restoration of the lot to its original condition to include but not limited to:

(1) Cap all utility service lines at the property line;

(2) All concrete slabs removed;

(3) All stem walls removed to 16 inches below grade;

(4) All fencing fully on the lot shall be removed; and

(5) Other structures (detached garage, storage, and the like) shall also be removed.

(B) Additionally, fill dirt shall be applied and leveled if necessary to complete the restoration process. This will include the filling of basement cavities.

(C) The vacated property will be left in a safe and sanitary condition.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.11 RESTRICTION ON ISSUANCE.**

No permit required by §§ 150.08, 150.09 and 150.10 shall be issued for the moving of any structure if the moving or placing of the structure at its new location within the Village of Milan will in any respect violate any ordinance, nor shall the permit be issued if the placing of the structure at its new location within the Village of Milan will violate the provisions of any contractual building restrictions existing in the particular subdivision of area to which the structure is proposed to be moved within the Village of Milan.

(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.12 FEE.**

No permit shall be issued pursuant to §§ 150.09 and 150.10 until a permit fee of \$25 is paid to the Village of Milan.  
(Ord. 125, passed 6-19-1985) Penalty, see § 150.99

**§ 150.13 APPEALS.**

(A) In the event of disapproval or denial of the application for the permit required by §§ 150.08 and 150.09, an appeal may be filed with the Village Board by delivering written notice of the appeal to the Village Clerk within 5 days after the disapproval or denial.

(B) The Village Board shall hear the appeal within 15 days from the date the Village Clerk receives the notice of appeal.

(C) The Village Board shall fix a time and place for the hearing on the appeal and shall give public notice and due notice to the parties in interest of the time and place of the hearing. At the hearing, any party may appear in person or by his or her attorney.

(D) The Village Board may, by a majority vote of its members, reverse the decision to disapprove or deny the applicant's application or it may uphold the denial if the Village Board determines that the issuance of the permit would be detrimental to the public health, safety or morals of the residents of the Village of Milan.  
(Ord. 125, passed 6-19-1985)

***ADDRESS ASSIGNMENT AND POSTING*****§ 150.25 SHORT TITLE.**

This subchapter shall be known as the Address Assignment and Posting Subchapter.  
(Ord. 156, passed 4-28-1993)

**§ 150.26 PURPOSE.**

The purpose of the Address Assignment and Posting Subchapter is to require the assignment and posting of address numbers in order that residences, places of business and buildings may be identified with the ease and speed necessary to enable the village or its designated representative to provide prompt emergency medical, police and fire fighting services and to regulate the assignment and posting of addresses on any street or highway within the Village of Milan.

(Ord. 156, passed 4-28-1993)

**§ 150.27 ASSIGNMENT.**

(A) The Code Enforcement Officer or person so appointed by the Mayor shall assign addresses to all buildings within the Village of Milan. The assignment shall not obligate the village to maintain or improve the roadway.

(B) Requests for address changes shall be made to the village by the owner of the property. The village may change an address assigned to any building if the address is inconsistent with the intent of the Address Assignment and Posting Subchapter.

(C) Beginning with the passage of this subchapter, and thence forward, the Code Enforcement Department or person so appointed by the Mayor shall maintain records showing the addresses assigned to all buildings and the records shall be open for public inspection during the normal business hours.  
(Ord. 156, passed 4-28-1993)



**§ 150.28 NOTICE.**

Notification by the village of address assignment or address change shall be as follows:

(A) On all new construction, the address shall be issued with the building permit. This shall be considered official notification.

(B) On all address changes, official notification shall consist of a written notice to the property owner or occupant.  
(Ord. 156, passed 4-28-1993)

**§ 150.29 POSTING.**

(A) The owner shall post or cause to be posted the assigned address within 30 days of notification by the village.

(B) To ensure the uniformity of the posting of addresses, all numbers shall be placed on the front of buildings and in so conspicuous a manner that the number may be easily discernible and read from the roadway from which it is addressed.

(C) For buildings on private streets or easements, the owner shall further post or cause to be posted the assigned address or range of assigned addresses within 10 feet of the point where the vehicular entrance to the premises leaves public right-of-way. The Code Enforcement Officer or person so appointed by the Mayor is authorized to permit a variance from this requirement only in cases of unreasonable conflict or extreme hardship.  
(Ord. 156, passed 4-28-1993) Penalty, see § 150.99

**§ 150.30 MAINTENANCE.**

(A) It shall be the responsibility of the property owner or occupant to maintain in good condition the address of the building.

(B) No person shall purposely take down, deface or in any manner, damage any sign or number posted under the provisions of the Address Assignment and Posting Subchapter.

(Ord. 156, passed 4-28-1993) Penalty, see § 150.99

**§ 150.31 SIZE AND TYPE.**

(A) The minimum size of numbers or letters posted shall be related to the distance between the centerline of public roadway and the posting location as follows:

<i>Distance</i>	<i>Height</i>	<i>Width</i>	<i>Weight (width of line)</i>
<i>From - To</i>			
Less than 50 feet	4 inches	2 inches	1/2 inch
Fifty to 100 feet	6 inches	3 inches	3/4 inch
One hundred to 200 feet	8 inches	5 inches	1-1/2 inches
Two hundred to 300 feet	10 inches	6 inches	1-1/2 inches

(B) Any building further than 300 feet from the public right-of-way shall in addition to posting the address on the front of the building, further post or cause to be posted the assigned address within 10 feet of the point where the vehicular entrance to the premises leaves public right-of-way.

(C) The address numbers or letters shall be made of a durable material which will reasonably withstand the natural elements.  
(Ord. 156, passed 4-28-1993) Penalty, see § 150.99

**§ 150.99 PENALTY.**

Any person or persons, firm or corporation, violating any of the provisions of this chapter or any of its sections, shall be subject to § 10.99.



## CHAPTER 151: FLOOD DAMAGE PREVENTION

### Section

#### *Statutory Authorization, Findings of Fact, Purpose and Methods*

- 151.01 Statutory authorization
- 151.02 Findings of fact
- 151.03 Statement of purpose
- 151.04 Methods of reducing flood losses

#### *General Provisions*

- 151.15 Definitions
- 151.16 Lands to which this chapter applies
- 151.17 Basis for establishing the areas of special flood hazard
- 151.18 Establishment of development permit
- 151.19 Compliance
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- 151.35 Designation of Floodplain Administrator
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#### *Provisions for Flood Hazard Reduction*

- 151.50 General standards
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- 151.52 Standards for subdivision proposals
- 151.53 Standards for areas of shallow flooding (AO/AH zones)
- 151.54 Floodways

#### *STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS*

##### **§ 151.01 STATUTORY AUTHORIZATION.**

The Legislature of the State of New Mexico has by statute, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Trustees of the Village of Milan, State of New Mexico, does ordain as follows.

(Ord. 132, passed 4-15-1987)

##### **§ 151.02 FINDINGS OF FACT.**

(A) The flood hazard areas of the Village of Milan are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

(Ord. 132, passed 4-15-1987)

### § 151.03 STATEMENT OF PURPOSE.

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 flood conditions in specific areas by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(F) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in a manner as to minimize future flood blight areas; and

(G) Ensure that potential buyers are notified that property is in a flood area.  
(Ord. 132, passed 4-15-1987)

### § 151.04 METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purposes, this chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve those uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging and other development which may increase flood damage; and

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.  
(Ord. 132, passed 4-15-1987)

### GENERAL PROVISIONS

#### § 151.15 DEFINITIONS.

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

**APPEAL.** A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

**AREA OF SHALLOW FLOODING.** A designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1% chance or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. This flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD.** The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. the area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**CRITICAL FEATURE.** An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT.** Any manmade change in improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, fillings, grading, paving, excavation or drilling operations.

**ELEVATED BUILDING.**

(1) A nonbasement building:

(a) Built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the floor of the water; and

(b) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

(2) In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, D, **ELEVATED BUILDING** also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

(3) In the case of Zones V1-30, VE, or V, **ELEVATED BUILDING** also includes a building otherwise meeting the definition of **ELEVATED BUILDING**, even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of 44 C.F.R. pt. 60.3 (e)(5) of the National Flood Insurance Program regulations.

**EXISTING CONSTRUCTION.** For the purposes of determining rates, structures for which the **START OF CONSTRUCTION** commenced before the effective date of the FIRM or before 1-1-1975, for FIRMs effective before that date. **EXISTING CONSTRUCTION** may also be referred to as **EXISTING STRUCTURES**.

**FLOOD or FLOODING.** A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters;  
or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

**FLOOD PROTECTION SYSTEM.** Those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard and the extent of the depths of associated flooding. This system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODPLAIN or FLOODPRONE AREA.** Any land area susceptible to being inundated by waters from any source. (See definition of **FLOODING**.)

**FLOODWAY (REGULATORY FLOODWAY).**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FUNCTIONALLY DEPENDENT USE.**

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HABITABLE FLOOR.** Any floor usable for the following purposes, which includes working, sleeping, eating, cooking, or recreation or a combination thereof. A floor used for storage purposes only is not a **HABITABLE FLOOR**.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surfaces prior to construction next to the proposed walls of a structure.

**LEVEE.** A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's **LOWEST FLOOR**; provided that the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of 44 C.F.R. pt. 60.3 of the National Flood Insurance regulations.

**MANUFACTURED HOME.** A structure transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term **MANUFACTURED HOME** also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term **MANUFACTURED HOME** does not include park trailers, travel trailers and other similar vehicles.

**MEAN SEA LEVEL.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION.** For floodplain management purposes, structures for which the **START OF CONSTRUCTION** commenced on or after the effective date of a floodplain management regulation adopted by a community.

**START OF CONSTRUCTION.** (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. No. 97-348, being 16 U.S.C. §§ 3501 *et seq.*)) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure.

**STRUCTURE.** A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL IMPROVEMENT.**

(1) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred.

(2) For the purpose of this definition **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(3) The term does not, however, include either:

(a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**VARIANCE.** A grant of relief to a person from the requirements of this chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this chapter. (For full requirements, see 44 C.F.R. pt. 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in 44 C.F.R. pt. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until the time as that documentation is provided.

**WATER SURFACE ELEVATION.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. (Ord. 132, passed 4-15-1987)

**§ 151.16 LANDS TO WHICH THIS CHAPTER APPLIES.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Village of Milan. (Ord. 132, passed 4-15-1987)

**§ 151.17 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, The Flood Insurance Study for Village of Milan, New Mexico dated 7-5-1982, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter. (Ord. 132, passed 4-15-1987)

**§ 151.18 ESTABLISHMENT OF DEVELOPMENT PERMIT.**

A development permit shall be required to ensure conformance with the provisions of this chapter. (Ord. 132, passed 4-15-1987)

**§ 151.19 COMPLIANCE.**

No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

(Ord. 132, passed 4-15-1987)

**§ 151.20 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 132, passed 4-15-1987)

**§ 151.21 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 governing body; and

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

(Ord. 132, passed 4-15-1987)

**§ 151.22 WARNING AND DISCLAIMER OF LIABILITY.**

(A) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations.

(B) On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes.

(C) This chapter does not imply that land outside the areas of special flood hazards or uses permitted within the areas will be free from flooding or flood damages.

(D) This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. 132, passed 4-15-1987)

**ADMINISTRATION****§ 151.35 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Mayor or his or her designee is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 C.F.R. (National Flood Insurance Program regulations) pertaining to floodplain management.

(Ord. 132, passed 4-15-1987)

**§ 151.36 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(A) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;

(B) Review permit application to determine whether proposed building site will be reasonably safe from flooding;

(C) Review, approve or deny all applications for development permits required by adoption of this chapter;



(D) Review permits for proposed development to assure that all necessary permits have been obtained from the federal, state or local governmental agencies (including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required.

(E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;

(F) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the State Engineers office, prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency;

(G) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(H) When base flood elevation data has not been provided in accordance with § 151.17, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and Floodway data available from a federal, state or other source, in order to administer the provisions of §§ 151.50 *et seq.*; and

(I) When a regulatory Floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the community.

(Ord. 132, passed 4-15-1987)

### § 151.37 PERMIT PROCEDURES.

(A) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of § 151.51;

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(5) Maintain a record of all information in accordance with § 151.36.

(B) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the purpose use; or

(10) The relationship of the proposed use to the comprehensive plan for that area.  
(Ord. 132, passed 4-15-1987)

### § 151.38 VARIANCE PROCEDURES.

(A) The Appeal Board as established by the community shall hear and render judgement on requests for variances from the requirements of this chapter.

(B) The Appeal Board shall hear and render judgement on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) Any person aggrieved by the decision of the Appeal Board may appeal the decision in the courts of competent jurisdiction.

(D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

(F) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in § 151.37(B) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(G) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach these conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (§ 151.03).

(H) Variances shall not be issued within any designated Floodway if any increase in flood levels during the base flood discharge would result.

(I) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(2) Variances shall only be issued upon:

(a) Showing a good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurated with the increased risk resulting from the reduced lowest floor elevation.

(J) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(1) The criteria outlined in divisions (A) through (I) are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. 132, passed 4-15-1987)

**PROVISIONS FOR FLOOD  
HAZARD REDUCTION**

**§ 151.50 GENERAL STANDARDS.**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

(A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters; and

(G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 132, passed 4-15-1987)

**§ 151.51 SPECIFIC STANDARDS.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in §§ 151.17, 151.36(H), or 151.52(C), the following provisions are required:

(A) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division as proposed in § 151.37(A)(1), is satisfied.

(B) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall that the design and methods of construction are in accordance with accepted standards of practice as outlined in this division. A record of the certification which includes the specific elevation (in relation to mean sea level) to which the structures are floodproofed shall be maintained by the Floodplain Administrator.

(C) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria.

(1) A minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than 1 foot above grade.

(3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(D) *Manufactured homes.*

(1) Require that all manufactured homes to be placed within Zone A, shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) All manufactured homes shall be in compliance with division (A) above.

(3) Require that all manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM be elevated on a permanent foundation so that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of this division.

(Ord. 132, passed 4-15-1987)

#### **§ 151.52 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals including manufactured homes parks and subdivisions shall be consistent with §§ 151.02, 151.03 and 151.04 of this chapter.

(B) All proposals for the development of subdivisions including manufactured home parks and subdivisions shall meet development permit requirements of §§ 151.18, 151.37 and the provisions of §§ 151.50 *et seq.* of this chapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development including manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to § 151.17 or § 151.36(H) of this chapter.

(D) All subdivision proposals including manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals including manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. 132, passed 4-15-1987)

**§ 151.53 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES).**

(A) Located within the areas of special flood hazard established in § 151.17, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident.

(B) This flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified);

(2) All new construction and substantial improvements of nonresidential structures:

(a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and

with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy;

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this chapter, as proposed in § 151.37, are satisfied; and

(4) Require within Zones AB or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(Ord. 132, passed 4-15-1987)

**§ 151.54 FLOODWAYS.**

(A) Floodways located within areas of special flood hazard established in § 151.17, are areas designated as floodways.

(B) Since the Floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply;

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; and

(2) If division (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 151.50 *et seq.*

(Ord. 132, passed 4-15-1987)



## **CHAPTER 152: FLOOD HAZARD PREVENTION**

### **Section**

- 152.01 Adoption by reference of requirements for Floodplain Management Regulations

### **§ 152.01 ADOPTION BY REFERENCE OF REQUIREMENTS FOR FLOODPLAIN MANAGEMENT REGULATIONS.**

Pursuant to NMSA § 3-17-6, 1978 Comp. the Village of Milan, hereby adopts by reference all of pt. 60.3 of the federal government's Requirements for Floodplain Management Regulations more properly cited as 44 C.F.R. pt. 60.3. A copy of the provision is by reference made a part hereof.  
(Ord. 110, passed 7-6-1982)





## CHAPTER 153: ZONING

### Section

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**GENERAL PROVISIONS**

**§ 153.001 TITLE AND INTENT.**

(A) This chapter shall be known and may be cited as the Village of Milan Zoning Ordinance.

(B) The intent of this chapter is to promote and protect the public health, safety, peace, comfort, convenience and general welfare for the village and for the following particular purposes:

(1) To improve the appearance of the village and its neighborhoods;

(2) To protect and improve the established and future use and to promote the social and economics stability of existing and future commercial, residential and other lands within the village;

(3) To promote good planning practices and to provide a regulatory mechanism which is flexible and reasonably easy for the public to understand while including a development review process and development standards which are clear and straightforward;

(4) To prevent the adverse impacts of uncontrolled development on the availability of water, water quality, roads, improvements and services within the village;

(5) To extend greater opportunities for community living, working, housing, and recreation for all residents of the village;

(6) To encourage a more efficient use of land and public services;

(7) To promote land development practices which will enhance the public health, safety and general welfare of the village; and

(8) To meet and achieve those objectives for a municipal zoning ordinance as set forth in NMSA § 3-21-5.  
(Ord. 216, passed 3-22-2007)

**§ 153.002 AUTHORITY.**

(A) This chapter is adopted pursuant to the village's authority as set forth and contained in NMSA §§ 3-21-1 through 3-21-26 which authorizes municipalities to adopt and enforce zoning ordinances.

(B) Whenever any provision of this chapter refers to or cites a section of the New Mexico Statutes and that section is hereafter amended or superseded, this chapter shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.  
(Ord. 216, passed 3-22-2007)

legislate in relation to the lands or the State of New Mexico has ceded the jurisdiction to legislate back to the United States on the lands. This chapter is also not applicable to state activities or development on state-owned lands. However, private activities or development for private purposes on the lands shall be subject to this chapter.

(C) All property in the village is governed according to the zoning district in which it is located. Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

(D) (1) Property that is annexed into the corporate limits of the village shall be automatically included in the Agricultural/Residential District (A-R), unless a property owner submits an application for a different zoning district.

(2) The official zoning map shall be amended to reflect subsequent annexations within a reasonable time period following the annexations.

(E) Approval of a zoning district, zone amendment or a specific development does not commit the village to provide water or sewer service more rapidly than is programmed by the village.  
(Ord. 206, passed 4-21-2005)

**§ 153.004 INTERPRETATION AND CONFLICT.**

(A) The regulations of this chapter are held to include the minimum standards necessary to carry out the purposes of this chapter. More stringent provisions may be required if it is demonstrated that different standards are necessary to protect the public health, safety and general welfare. This chapter is not intended to interfere with, abrogate or annul any easement, covenant or other agreement between parties or other valid ordinance. Where the provisions of this chapter conflict with other rules, regulations, easements, covenants, agreements or other village ordinances or resolutions, the provisions of this chapter shall be controlling, except where case law or statutes state otherwise. Where this chapter imposes

greater restrictions than those imposed by other rules, regulations, easements, covenants, agreements or village ordinances or resolutions, the provisions of this chapter shall be controlling.

(B) Unless a different intent is indicated herein or in an adopted village plan, uses allowed under the terms of this chapter shall be understood to be allowed within structures only if they are constructed according to the Uniform Building Code and other technical codes adopted by the State of New Mexico and/or the Village of Milan, as of the date of the structure's construction.

(C) Where uncertainty exists as to the boundaries of any of the zoning districts as shown on the official zoning map, the following rules of interpretation shall apply.

(1) Lands not included within the boundaries of any district shall be designated (A-R) Agricultural/Residential District.

(2) Where boundary lines are indicated by following streets and alleys, they shall be construed as following the centerlines thereof.

(3) Where district boundaries are indicated by approximately following lot lines, the lines shall be construed to be the boundaries.

(4) Where a district boundary divides a lot, the location of the boundary shall be determined by use of the scale appearing on the official zoning map, unless the boundary is indicated by dimensions.

(5) In case of further uncertainty, the Board of Trustees shall determine the specific location of the boundaries.  
(Ord. 206, passed 4-21-2005)

**§ 153.005 RELATIONSHIP TO EXISTING ZONING.**

To the extent that the provisions of this chapter are the same in substance as the previously adopted provisions that they replace in the village's zoning ordinance, they will be considered continuations

thereof and not as new enactments unless specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this chapter merely by the repeal of the previous ordinance.  
(Ord. 206, passed 4-21-2005)

**§ 153.006 NO USE OF SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH THE PROVISIONS OF THIS CHAPTER.**

(A) Subject to the provisions of § 153.055 (Nonconforming Uses, Buildings and Parcels), no person may use, occupy or sell any land or buildings or authorize or the permit the use, occupancy or sale of land or buildings under his or her control except in accordance with all of the applicable provisions of this chapter.

(B) For the purposes of this section, the *USE* or *OCCUPANCY* of a building or land relates to anything and everything that is done to, on, or in that building or land.  
(Ord. 206, passed 4-21-2005)

**§ 153.007 SEVERABILITY.**

If any section, division, sentence, clause or phrase of this chapter if for any reason held by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this chapter. The Board of Trustees hereby declares that it would have passed this chapter, section, division, sentence, clause and phrase thereof, irrespective of the fact that any 1 or more sections, divisions, sentences, clauses or phrases be declared invalid.  
(Ord. 206, passed 4-21-2005)

**§ 153.008 EFFECTIVE DATE.**

The provisions of this chapter were originally passed, adopted and approved by the Board of Trustees on 4-21-2005 and became effective on 4-26-2005.  
(Ord. 206, passed 4-21-2005)

**§ 153.009 REPEAL AND SAVING CLAUSE.**

Provisions of the earlier enactments shall remain in effect for purposes only during the pendency of proceedings and until their final disposition. Subject to the foregoing all other ordinances in conflict with the provisions of this chapter or variance with the requirements of this chapter are hereby repealed, excluding any ordinances or portions of ordinances adopted to promote the general health, safety, morals, convenience and welfare, which contain more restrictive requirements or higher standards, in which case the portions of ordinances or the ordinances shall not be repealed.  
(Ord. 206, passed 4-21-2005)

**DEFINITIONS AND WORD CONSTRUCTION**

**§ 153.020 WORD CONSTRUCTION.**

(A) Unless otherwise expressly stated, the following terms shall, for the purposes of this chapter, have the meaning herein indicated.

(B) Words used in the present tense include the future; words in the masculine include the feminine; and words in the singular include the plural.

(C) The word *BUILDING* includes the word *STRUCTURE*.

(D) The word *SHALL* is mandatory while the word *MAY* is permissive.

(E) The word *PERSON* includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

(F) The words *USED* or *OCCUPIED* include the words *INTENDED*, *DESIGNED OR ARRANGED TO BE USED OR OCCUPIED*.

(G) The word *LOT* includes the words *PLOT*, *PARCEL* or *TRACT*.  
(Ord. 206, passed 4-21-2005)

**§ 153.021 DEFINITIONS.**

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

**ACCESSORY BUILDING (or STRUCTURE).** A detached subordinate building, the use of which is incidental to that of the main building on the same lot, or the use of the land of the same lot.

**ACCESSORY DWELLING UNIT.** A second unit on a parcel occupied by a single-family residential use, equipped with kitchen facilities, attached to the main building and designed for use in conjunction with the main building (residence).

**ACCESSORY USE.** A use subordinate to the principal use on the same lot and serving a purpose customarily incidental to and not affecting the characteristics of the principal use.

**ADULT ENTERTAINMENT ESTABLISHMENTS.** Any establishment or place of business where any individual, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, operates, carries on any adult entertainment enterprise regardless of whether any other use is also conducted on the premises. An adult entertainment enterprise is any business activity where films motion pictures, videocassettes, slides or paraphernalia of sexual anatomical areas or sexual activities are furnished or viewed.

**ADVERTISING.** Any announcement, description or presentation calling public attention to goods or services offered for sale.

**AGENT OF OWNER.** A person who can show written proof of authorization to act as the property owner.

**AGRICULTURE.** Farming, dairying, pasturage, apiaries, horticulture, floriculture, viticulture and animal or poultry husbandry, but not including the commercial feeding of garbage to swine or other animals.

**ALLEY.** A public access driveway or lane which provides only a secondary means of access to abutting property.

**ANIMAL HOSPITAL.** A facility providing medical care for small and/or large animals which includes boarding the animals.

**ANTENNA.** A conductor erected for the transmission and/or reception of radio, television or other electromagnetic or microwave signals.

**APARTMENT HOUSE.** Any building or portion thereof, which is designed and built for rental occupancy by 3 or more families.

**ARCADE.** Any public place of amusement or public place of business in which mechanical amusement devices are installed and includes any place open to the public, whether or not the primary use of the premises is devoted to the operation of amusement devices.

**ATTACHED SIGN.** A sign, which is affixed to and made an integral part of a building or structure.  
**ATTACHED SIGNS,** which include wall signs, roof signs, and projecting signs, to distinguish them from freestanding and monument signs.

**BED AND BREAKFAST ESTABLISHMENT.** A residential structure used as a lodging establishment in which the manager is an occupant in the structure and receives compensation in exchange for providing overnight sleeping accommodations, which contain no cooking facilities.

**BILLBOARD.** A sign, other than a directional sign, which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a place other than on the parcel where the sign is erected.

**BUFFERING.** The on-site use of landscaping elements, screening, fencing, open space and landforms for reduction of the potentially adverse impacts of adjoining dissimilar land uses.

**BUILDABLE AREA.** The portion of a lot remaining after the required yards have been provided.

**BUILDING.** A structure having a roof supported by columns and/or walls and intended for the housing or shelter of any person, animals or goods.

**BUILDING HEIGHT.** The vertical distance measured from the average finished soil grade at the base of the exterior wall to the highest point of the roof, ridge or parapet wall.

**BUILDING SITE.** The land area of a lot, which may be occupied by the permitted main building.

**BUSINESS.** A commercial entity operating in the Village of Milan with an approved business license.

**CARPORT.** A shelter for 1 or more automobiles which is not enclosed on at least 2 sides by walls and doors.

**CLUSTERING.** The practice of grouping residential units within a close proximity and utilizing the surplus land thus saved for common space, landscaping, recreation and the like.

**CONDITIONAL USE.** A land use specifically identified in this chapter as being acceptable in a given zoning district which must be reviewed and approved by the Planning and Zoning Commission. The Planning and Zoning Commission may attach conditions to the approval of the land use in order to achieve compatibility with the neighborhood and surrounding land uses.

**CONDOMINIUM.** A distinct unit, under separate ownership, which is a portion of a multi-unit building or development in which ownership includes an interest in common areas.

**DAY CARE CENTER.** A facility in which the primary use is the provision of childcare services in accordance with the regulations of the State of New Mexico.

**DOUBLE-FACED SIGN.** A sign designed to be viewed from 2 directions.

**DRIVE-IN.** An enterprise or business activity or other use of land consisting of sales or service activity rendered to patrons who normally receive the products or services while in automobiles upon the premises including, but not limited to, drive-in restaurants and drive-up banks.

**DUPLEX RESIDENTIAL UNIT.** A building arranged, intended or designed to be occupied by 2 families living independently of each other and having separate cooking facilities in each dwelling unit.

**FAMILY.** One or more persons, occupying premises and living together as a single housekeeping unit, as distinguished from a group occupying a hotel or club.

**FENCE.** Any structure made of wood, metal, masonry, shrubbery or other material forming a physical barrier which supports no load other than its own weight and which is designed to delineate, screen or enclosed a field, yard, lot or other land area.

**FLOOR AREA.** The gross horizontal area of the total number of floors of a building.

**FLOOR AREA RATIO (FAR).** The relationship of the floor area to the lot area computed by dividing the floor area by the lot area.

**FREESTANDING SIGN.** A sign which is wholly or partly supported by a structural element which is not an integral part of a building. Portable signs and signs on fences shall be considered **FREESTANDING SIGNS.**

**FRONT LOT LINE.** The property line along a lot's street frontage.

**FRONT YARD.** The required setback extending across the front of the lot between the side yard lines and measured from the front lot line to the front setback line.

**HOME OCCUPATION.** A business activity conducted entirely within or from an enclosed dwelling.

**HOTEL.** Any building, portion of a building, or group of buildings containing guest rooms which is designed, used or intended for use for the accommodation of transients on a commercial basis.

**IDENTIFICATION SIGN.** A sign which is limited to the name and address of a business, institution or person and to the activity or product carried on in the business or institution or the occupation of the persons.

**JUNKYARD.** An area of 100 square feet or more, including wrecking yards, used for storage or dismantling of junk, scrap metals, materials, salvaged from wrecked or demolished buildings, automobiles, machinery or equipment.

**LAUNDROMAT.** A place where patrons wash, dry or dry-clean clothing in machines operated by the patron.

**LOT.** A parcel of land platted and placed on record in accordance with state laws and local ordinances, held in separate ownership and used or capable of being used under the regulations of this chapter, and including all required yards.

**LOT AREA.** The computed area contained within the lot lines of a parcel.

**MOBILE HOME (MANUFACTURED HOME).** A movable or portable housing structure over 32 feet in length or over 8 feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence. **MANUFACTURED HOME** does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. **MANUFACTURED HOME** includes any movable or portable housing structure over 12 feet in width and 40 feet in length, which is used for nonresidential purposes. (Manufactured Housing Act, NMSA § 60-14-1, 1978).

**MOBILE HOME PARK TRAILER PARK.** A parcel of land used for the continuous accommodation of 12 or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his or her agents, lessees or assignees.

**MOBILE HOME SPACE.** A parcel of land within a mobile home park designated by the management to accommodate 1 mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park.

**MOBILE HOME SUBDIVISION.** A parcel of land, 5 acres or more in size, which is subdivided into lots individually owned and utilized as the site for placement of a single mobile home.

**MONUMENT SIGN.** A low profile, freestanding sign 7 feet or less in height.

**MOTEL.** A building or group of buildings on the same lot, containing guest rooms, used or designed for the accommodation of transients on a commercial basis, which are independently accessible from the outside.

**MULTIPLE FAMILY BUILDING OR DWELLING.** A building or structure designed and intended to be occupied as living quarters by 3 or more families, living independently of each other and having separate cooking facilities in each dwelling unit.

**NONCONFORMING BUILDING.** A building or structure or portion thereof lawfully existing on the effective date of this chapter, which does not conform to the property development standards of this chapter for the zoning district in which it is located.

**NONCONFORMING LOT.** A lot existing on the effective date of this chapter or amendment to this chapter due to annexation of the property to the village, or amendment to the Zoning Code.

**NONCONFORMING SIGN.** A sign, which was lawfully erected but does not comply with this chapter due to annexation of the property to the village, or amendment to the Zoning Code.

**NONCONFORMING USES.** A utilization or occupancy of any site lawfully utilized or occupied on the effective date of this chapter or amendment to this chapter, which is not a permitted use for the district in which it is located, according to this chapter.

**OFF-SITE SIGN.** A sign, such as a billboard, which is not located on the same parcel of land as the entity or product it advertises.

**PARK.** A playground, swimming pool, athletic field or open space under the control of the Village of Milan.

**PARKING LOT.** An area of land, a yard, or other space on a lot legally used for and designed for access and parking by standard motor vehicles.

**PARKING SPACE.** Land or space which is laid out for, and used or designed to be used for a standing vehicle.

**PLANNING ADMINISTRATOR.** The person or his or her designee charged with the responsibilities enumerated herein.

**POLITICAL SIGN.** A sign which is intended to influence the vote for the passage or defeat of a measure, or nomination, election or defeat of a candidate in any government election.

**PROJECTING SIGN.** A sign erected on the wall of a building or structure, or suspended from an overhang, with display surfaces generally not parallel to the wall.

**REAR YARD.** The required setback area extending across the full width of the lot and measured between the rear lot line and the rear setback line.

**RECREATIONAL VEHICLE.** A vehicle with a camping body that either has its own motive power or is drawn by another vehicle.

**RELIGIOUS INSTITUTION.** A building, which is used primarily for religious worship and/or related religious activities.

**RESIDENTIAL CARE HOME.** A resident occupied dwelling, licensed by the state, in which children and/or adults are cared for on a full-time, live-in basis.

**RETAINING WALL.** A wall designed to contain soil on 1 side of the wall, which is at a higher elevation than that on the other side of the wall.

**ROOF SIGN.** An attached sign erected on a roof or projecting above the eave of the building.

**SCHOOL.** An institution of learning, whether public or private.

**SETBACK LINE.** A line established by this chapter to govern the placement of a building or a structure with respect to its lot boundary lines.

**SHOPPING CENTER.** A commercial center having at least 4 distinct business occupants.

**SIDE YARD.** The required side setback area between the side lot line and the side setback line, and extending from the front lot line to the rear lot line.

**SIGN AREA.** The entire area within a single continuous perimeter enclosing the writing, representation, emblem or any figure of similar characters.

**SIGN HEIGHT.** The vertical distance from the soil level of the surrounding area to the highest point of the sign or any vertical projection.

**SINGLE-FAMILY DWELLING.** A building designed for occupancy by 1 family, not including a boarding house, motel or hotel.

**SOUND WALL FENCE.** A wall fence, constructed of materials such as concrete block, brick, stone, concrete, steel or stucco, designed to reduce the level of nearby sounds.

**STRUCTURAL ALTERATIONS.** Any change in the supporting members of a building, such as bearing walls, columns, beams, girders, floor joists, ceiling joists or roof rafters.



**STRUCTURE.** Anything constructed or erected upon the ground or attached to construction having location on the ground, but excluding swimming pools and uncovered paved areas such as patios and parking lots.

**TEMPORARY SIGN.** A sign, usually constructed of light materials, displayed for 30 days or less.

**TOWNHOUSE.** A condominium dwelling unit, which is the sole dwelling unit on a separate parcel of land, with no dwelling units above or below.

**TRAILER.** A vehicle without motive power not exceeding 40 feet in overall length, 8 feet in width, or 12 feet overall height.

**TRAVEL TRAILER COURT or RECREATIONAL VEHICLE CAMPGROUND.** A parcel of land with spaces provided for temporary use by travel trailers and recreational vehicles.

**WALL SIGN.** A sign erected on a wall or fascia of a building or structure, the face of which is parallel to the wall or fascia.

**WINDOW SIGN.** A sign, which is displayed in or through a window, and is visible from a street, walkway or parking lot.

**WIRE MESH FENCING.** Fence material which derives its strength from metal strands crossing in a regular pattern, including, but not limited to, those materials known as a chain link or chicken wire, but does not include ornamental wrought iron fencing.

**XERISCAPE.** A type of landscaping utilizing native plants and ground cover and needs little maintenance or water.

**YARD.** An open space, unoccupied and unobstructed, by any structure or portion of a structure from 30 inches above the ground upward, except as otherwise provided in this chapter. (Ord. 206, passed 4-21-2005)

**ZONING DISTRICT REGULATIONS**

**§ 153.035 DESIGNATION AND ESTABLISHMENT OF DISTRICTS.**

(A) The following zoning districts are designated and established by this chapter.

- A-R Agricultural/Residential District
- R-1 Single-Family Residential District
- R-2 Mixed Residential District
- C-1 Community Commercial District
- C-2 Highway-Oriented Commercial District
- M-1 Industrial District
- P-1 Public/Institutional District
- P-D Planned Development District

(B) The official zoning map of the Village of Milan, which delineates the above described zoning districts, is declared a part of this chapter and shall constitute the official description of the location of each district in the Village of Milan. (Ord. 206, passed 4-21-2005)

**§ 153.036 A-R, AGRICULTURAL/ RESIDENTIAL DISTRICT.**

(A) *Purpose.*

(1) The purpose of the A-R District is to provide suitable areas for agricultural land uses and related activities which support agriculture as well as low density residential uses that are compatible with a rural area.

(2) At present, these lands provide areas for agricultural activities.

(3) The land uses permitted in the A-R District are those enumerated in § 153.044 of this chapter.

(B) *Site and building requirements.*

Minimum lot area	1 acre
Minimum lot width	100 feet
Minimum yards	
Front yard	25 feet
Side yard	10 feet
Rear yard	25 feet
Maximum height	No building or structure shall exceed 35 feet.
Exceptions	Silo, chimney, cooling tower, water tower or tank, flagpole or antennas usually required to be placed above the roof level and not intended for human occupancy. Churches, hospitals, or public institutions may also exceed the height limit but all structures exceeding the height limit shall be set back from each yard or lot line at least 1 foot for each additional height above the maximum requirement.

(C) *Permitted residential development.* Cluster residential development is permitted with an average net density of 1 unit per acre.

(D) *Keeping of livestock.* Keeping of livestock on parcels designated A-R within the village limits shall not be permitted.

(E) *Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.037 R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.**

(A) *Purpose.*

(1) The purpose of the R-1 District is to provide areas within the village which may be used for single-family and low density clustered housing.

(2) The land uses and development requirements within the R-1 District are designed to enhance and protect the residential neighborhoods within the village.

(3) The land uses permitted in the R-1 District are those enumerated in § 153.044 of this chapter.

(B) *Site and building requirements.*

Minimum lot area	6,000 square feet
Minimum lot width	60 feet
Minimum yards	
Front yard	20 feet
Side yard	5 feet, except on a corner lot where the minimum street side must be 10 feet
Rear yard	15 feet
Maximum height	No building shall exceed 35 feet
Open storage is not permitted.	
Development shall connect to the public water and sewer system; individual septic and wells will not be permitted.	

(C) *Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.038 R-2, MIXED RESIDENTIAL DISTRICT.**

*(A) Purpose.*

(1) The purpose of the R-2 District is to encourage a mix of housing types and higher residential densities within the village.

(2) The R-2 District allows mobile homes, duplexes, apartments, and townhouses, in addition to the single-family dwelling units permitted in the R-1 District.

(3) The land uses permitted in the R-2 District are those enumerated in § 153.044 of this chapter.

*(B) Site and building requirements.*

Minimum lot size	6,000 square feet
Minimum lot width	60 feet
Minimum yards	
Front yard	20 feet
Side yard	5 feet, except on a corner lot where the minimum street side must be 10 feet.
Rear yard	15 feet
Maximum height	No building shall exceed 45 feet.
Floor area ratio	1.0 or less
Maximum density	30 units/acre or less

*(C) Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.039 C-1, COMMUNITY COMMERCIAL DISTRICT.**

*(A) Purpose.*

(1) The purpose of the Community Commercial District is to allow those commercial activities that serve the general community on a daily basis.

(2) Pedestrian oriented development is encouraged to facilitate more opportunities for community interactions and socializing.

(3) Some types of residential development are also permitted which are conducive to the mixture of the land uses in this area.

(4) The C-1 District is the heart and the soul of the community and provides a sense of cohesiveness and identity for the village.

(5) The land uses permitted in the C-1 District are those enumerated in § 153.044 of this chapter.

*(B) Site and building requirements.*

Minimum lot size	None
Minimum lot width	None
Minimum yards	None, except where the site abuts a residential district, then the setback requirements of the residential district apply.
Maximum height	45 feet
Maximum density	30 units/acre or less for residential development

*(C) Additional regulations.* Additional regulations for all developments are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.040 C-2, HIGHWAY-ORIENTED COMMERCIAL DISTRICT.**

*(A) Purpose.*

(1) The purpose of the C-2 District is to provide areas conveniently situated near Interstate 40 to serve the traveling public and to encourage travelers to visit the Village of Milan.

(2) The uses in this district are intended to have immediate access from Interstate 40.

(3) The C-2 District is the entryway into the village and a development's design should be pleasing and entice travelers to visit the village.

(4) Ample parking, landscaping and creative design are encouraged in the C-2 Highway Commercial District.

(5) The land uses permitted in the C-2 Districts are those enumerated in § 153.044 of this chapter.

*(B) Site and building requirements.*

Minimum lot size	None
Minimum lot width	None
Minimum yards	
Front yard	20 feet adjacent to street
All other side and rear yards shall match the setback required along the same property. There is no required side yard or rear setback if the adjacent property is in the same district.	
Maximum Height	75 feet

*(C) Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.041 M-1, LIGHT INDUSTRIAL DISTRICT.**

*(A) Purpose.*

(1) Purpose of the M-1, Industrial District is to provide areas in the village suitable for manufacturing, assembly, storage, distribution and wholesaling of materials.

(2) Because of their environmental impacts, it is intended that the M-1 District be located in areas which will avoid conflicts with more sensitive land uses, and in areas with good transportation access.

(3) The land uses permitted in the M-1 District are those enumerated in § 153.044 of this chapter.

*(B) Site and building requirements.*

Minimum lot size	10,000 square feet
Maximum building coverage	60%
Minimum yards	
Front yard	30 feet
Side yard	10 feet
Side yard adjacent to street	20 feet
Rear yard	10 feet
Maximum height	45 feet

*(C) Activity standards.* All activities shall be conducted in a manner that noise, smoke, dust, odors and waste of any kind are confined and/or purified so as to control pollution of air, soil or water, to eliminate any detrimental effect to the public health, safety, welfare and to be in harmony with the objectives of the comprehensive plan.

*(D) Illumination.* Illumination of signs facades, buildings, parking areas and loading facilities shall be arranged so as to eliminate glare from roadways and streets, and shall be directed away from properties lying outside the district.

(E) *Manufacturing and storage areas.* All manufacturing and fabrication operations shall be conducted entirely within buildings. All equipment and material storage areas shall be screened by solid walls, fences or adequate landscaping not less than 6 feet in height.

(F) *Abutting districts.* Whenever a site abuts an R-1, R-2, C-1, C-2, or P-1 District, a 5-foot width landscaped buffer shall be permanently maintained to buffer noise and unsightliness.

(G) *Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.042 P-1, PUBLIC/INSTITUTIONAL DISTRICT.**

(A) *Purpose.*

(1) The purpose of the Public/Institutional District is to provide for governmental, public utility, educational and community service or recreational facilities.

(2) These uses are unique in that their proximity to sensitive land uses is not generally detrimental to the quality of life, and in many cases is desirable and convenient.

(3) The land uses permitted in the P-1 District are those enumerated in § 153.044 of this chapter.

(B) *Site and building requirements.*

Minimum lot size	None
Maximum building coverage	30%
Minimum yards	
The minimum front, side and rear yards shall be equal to the respective front, side and rear yards required in the most restrictive abutting district.	

Maximum height	35 feet
The maximum height for communications facilities shall be 50 feet. With an approved conditional use permit, communication facilities or other buildings may be permitted to a maximum height not to exceed 75 feet.	

(C) *Additional regulations.* Additional regulations for all development are included in §§ 153.055 *et seq.* (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.043 P-D, PLANNED DEVELOPMENT DISTRICT.**

(A) *Purpose.*

(1) The purpose of the Planned Development District (a floating district) is to provide for the development of large tracts of land that will allow flexible design and ownership patterns.

(2) The major purposes of the Planned Development Districts are to:

- (a) Implement the objectives of the comprehensive plan;
- (b) Encourage variety and amenities normally not provided in smaller development projects;
- (c) Conserve superior natural and historical features;
- (d) Reduce, when appropriate, the amount of public and private improvements required by developments; and
- (e) Provide more desirable public and private open spaces.

(B) *Location and site area.* A Planned Development District may be located in any area of the village provided that the site area is of sufficient size, but in no case shall it be less than 1 acre.

(C) *Modification of code requirement.* A Planned Development District will require rezoning application and public hearing, as provided in § 153.135. In approving the Planned Development District, the village may make modifications to zoning requirements pertaining to setbacks and other development standards contained herein if the following findings are made:

(1) The Planned Development District as proposed will result in a significantly better environment than otherwise would have occurred in a reasonable development in strict accord with the zoning regulations;

(2) The Planned Development District is compatible with and has meaningful relationship to the neighborhood in which it is located;

(3) The Planned Development District will not result in significant adverse environmental impacts; and

(4) The Planned Development District is in accord with the objectives of the comprehensive plan.

(D) *Elements to consider.* In considering whether the preceding findings can be made, the following elements will be considered.

(1) Quantity and quality of natural open space areas; retention if significant natural areas; prominent features of the land; and existing vegetation.

(2) Quantity and quality of usable open space areas.

(3) Site design factors such as the building orientation and grouping (clustering); building coverage, balance between individual buildings and overall variety design of pedestrian and vehicular circulation; design of parking; and landscape design.

(E) *Dedication of open space and streets.* Open space areas and/or streets preserved or created in the Planned Development District may be required to be dedicated to the village as a permanent open space and as a public right-of-way or may be required to be permanently reserved by dedication of a visual open space easement across the lands.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.044 USE TABLE.**

The following table enumerates various land uses and demotes which are permitted-by-right in each district and which may be conditionally permitted or issued a temporary use permit. Uses-by-right must comply with the building restrictions contained in this chapter.

<i>Table 1 - Use for All Zoning Districts</i>							
X = Permitted-by-right C = Conditionally Permitted T = Temporary Permit Required							
<i>Type of Land Use</i>	<i>A-R</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>M-1</i>	<i>P-1</i>
Accessory Building	X	X	X	X	X	X	X
Accessory Dwelling Unit	C	C	C	C			
Adult Entertainment Establishment							
Agricultural Production	X						
Ambulance Service (Emergency Medical Service)				X	X	X	X

Table 1 - Use for All Zoning Districts

X = Permitted-by-right C = Conditionally Permitted T = Temporary Permit Required							
Type of Land Use	A-R	R-1	R-2	C-1	C-2	M-1	P-1
Chemical Supply Establishment						C	
Children's Day Care Center		C	C	X			
Christmas Tree Lot	T	T	T	T	T	T	
Church or Religious Institution	C	C	C	C	C	C	
Clothing Sales or Service				X	X		
Commercial Garage					X	X	
Commercial Parking Lot				X	X	X	X
Community Center		C	C				X
Condominium Residential Units			X				
Crude Oil Rail Terminal and Transloading Facility						X	
Dairy	C						
Department Retail Store				X	X		
Duplex Residential Units			X				
Family Care Facility	C	C	C				
Farm	X						
Feed Store	X			X	X	X	
Firewood Sales and Storage						X	
Flea Market/Outdoor Booth Sales					T	T	
Florist				X	X		
Food Processing Plant						C	
Funeral Service				X	X		
Furniture Sales or Service				X	X		
Gas Station	C			X	X	X	
General Building Contractors	C			C	C	X	
Gift Shop				X	X		
Grocery Store or Deli				X	X		
Gymnasium/Health Club				C	C		

## Milan - Land Usage

<i>Table 1 - Use for All Zoning Districts</i>							
X = Permitted-by-right C = Conditionally Permitted T = Temporary Permit Required							
<i>Type of Land Use</i>	<i>A-R</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>M-1</i>	<i>P-1</i>
Hardware Store				X	X	X	
Hazardous Waste Transport, Recycling Processing or Storage Facility					C		
Home Occupations	C	C	C				
Home Health Care Services				X	X		
Hospital, Clinic, Rest Home	C				X		C
Hotel/Motel				X	X	C	
Household Appliance Store				X	X		
Junk Yard						C	
Kennel	C		C	C	C	C	
Laundromat				X	X		
Library				X	X		X
Liquor Store				X	X		
Locker Storage and Rental				C	C	X	
Lodge/Club/Fraternal Hall				X	X		
Lumber Yard						X	
Machine Shop						X	
Manufacturing/Assembly Plant				C	C	C	
Medical/Dental Office or Clinic				X	X		
Mobile Home, Manufactured Housing	C	C	X				
Mobile Homes			X				
Mobile Home Dealers					X		
Mobile Home Park/Trailer Court					C	C	
Mortuary/Crematory				X	X		
Multiple-Family Dwelling			X	C			
Museum				X	X		X
Nurseries and Garden Stores	X			X	X		
Pawn Shop				X	X		



*Table 1 - Use for All Zoning Districts*

X = Permitted-by-right  
 C = Conditionally Permitted  
 T = Temporary Permit Required

<i>Type of Land Use</i>	<i>A-R</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>M-1</i>	<i>P-1</i>
Photographic Studio				X	X		
Plumbing or Heating Supply or Service				X	X		
Printing Shop				X	X		
Professional Offices (other than medical and dental)				X	X		
Public Utility Offices				C	X		X
Public Utility Equipment Yards						X	
RV and Trailer Park			C			C	
Ranch	X						
Real Estate Sales Office	T	T	T	X	X	X	
Research and Development Facility						C	
Residential, Multi-Family			X	C			
Residential, Single-Family	X	X	X	C			
Restaurant				X	X	C	
Sale of Farm Products (grown on site)	X						
School (public or private)	C	C	C	C	C	C	X
Sheet Metal Fabrication						X	
Signs (as permissible under § 153.062)	X	X	X	X	X	X	X
Social Services				X	X		X
Television Repair Shop				X	X		
Travel Agency				X	X		
Travel Trailer/Camping Facility/RV Park					X	C	
Truck Service Station, or Terminal					C	C	
Truck Storage or Parking Yard						C	
Vehicle Dealership, New or Used				X	X	X	
Video Tape Rental Store				X	X		

<i>Table 1 - Use for All Zoning Districts</i>							
X = Permitted-by-right C = Conditionally Permitted T = Temporary Permit Required							
<i>Type of Land Use</i>	<i>A-R</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>M-1</i>	<i>P-1</i>
Warehouse Storage Facility				C	C	X	
Welding Facility						X	
Wholesale Trading Establishment					C	X	

(Ord. 216, passed 3-22-2007; Am. Ord. 245, passed 6-27-2014)

**REGULATIONS APPLYING TO ALL DISTRICTS**

**§ 153.055 NONCONFORMING USES, BUILDINGS AND PARCELS.**

(A) Any use of a building or land at the effective date of this chapter, or of subsequent amendments to it, that does not conform to the regulations shall be deemed to be a non-conforming use and may not be continued, except as otherwise provided herein. Any Building lawfully existing at the effective date of this chapter, or as of the date of subsequent amendments to the chapter, that is wholly or partially used, or designed for use, contrary to the regulations, shall be deemed to then be a non-conforming building and may so used or continue in such use. Any building for which a permit has been lawfully granted prior to the effective date of the chapter, or of subsequent amendment to it, must be completed in accordance with the approved plans; provided that actual construction is started with 2 months of the date of issuance of the permit and diligently executed until its completion. The term actual construction for the purposes of this section is intended and shall be construed to mean the performance of any meaningful work or labor on the construction of the building, the effect of which is apparent upon the building site. Such building shall thereafter be deemed to be a lawful existing non-conforming building.

(B) A variance will be granted to permit the continuation of any building, structure, improvement or premises existing immediately prior to the time this chapter or any amendment to it become effective, if such existing building, structure, improvement or premises was not previously in violation of any other ordinance, regulation or law.

(C) This section does not authorize the extension, expansion or enlargement of an existing non-conforming building, structure, improvement or premises except as provided below.

(1) The proposed extension, expansion or enlargement is limited to a maximum of 25 % of the gross floor area of the nonconforming building;

(2) The proposed extension, expansion or enlargement will not adversely impact adjoining properties; and

(3) The proposed extension, expansion or enlargement will comply all applicable building codes requirements and other applicable state and/or federal requirements.

(D) Nothing in this chapter shall be construed to prevent the restoration and resumption of a formerly lawful use of any building that is damaged or partially destroyed by fire or other calamity, or by an act of God, to the extent it requires 75% or less in

*Table 1 - Use for All Zoning Districts*

X = Permitted-by-right C = Conditionally Permitted T = Temporary Permit Required							
<i>Type of Land Use</i>	<i>A-R</i>	<i>R-1</i>	<i>R-2</i>	<i>C-1</i>	<i>C-2</i>	<i>M-1</i>	<i>P-1</i>
Facilities of all public utilities, and corporations or other organizations whose activities are under the jurisdiction of the Federal Communications Commission or the Interstate Commerce Commission	C					C	C
All facilities owned or leased, and operated or used, by the Village of Milan, Cibola County, the State of New Mexico the U.S. Government, Milan School District or any other governmental agency							X

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**REGULATIONS APPLYING TO ALL DISTRICTS**

**§ 153.055 NONCONFORMING USES, BUILDINGS AND PARCELS.**

(A) Any use lawfully occupying a building or land at the effective date of this chapter, or of subsequent amendments to it, that does not conform to the regulations shall be deemed to be a nonconforming use and may be continued, except as otherwise provided herein. Any building lawfully existing at the effective date of this chapter, or of subsequent amendments to it, that is wholly or partially used, or designed for use, contrary to the regulations, shall be deemed to be a nonconforming building and may so used or continue in that use. Any building for which a permit has been lawfully granted at the effective date of this chapter, or of subsequent amendments to it, must be completed in accordance with the approved plans; provided that actual construction is started within 2 months of the date of issuance of the permit and diligently executed until its completion. The term *ACTUAL*

**CONSTRUCTION** for the purposes of this section is intended and shall be construed to mean the performance of any work or labor, the effect of which is apparent upon the building site. The building shall thereafter be deemed to be a lawful existing nonconforming building.

(B) A variance is automatically granted so as to permit the continuation of any building, structure, improvement or premises existing immediately prior to the time this chapter or any amendment to it becomes effective, if the existing building, structure, improvement or premises was not in violation of any other ordinance, regulation or law.

(C) This section does not authorize the extension, expansion or enlargement of existing nonconforming building, structure, improvement or premises was not in violation of any other ordinance, regulation or law.

(1) The proposed extension, expansion, and/or enlargement is limited to a maximum of 25% of the gross floor area of the nonconforming building.

(2) The proposed extension, expansion and/or enlargement shall not adversely impact adjoining properties.

(3) The owner complies with all requirements set forth by the Construction Industries Division and any other state and/or federal requirements.

(D) Nothing in this chapter shall be construed to prevent the restoration and resumption of a formerly lawful use of any building that is damaged or partially destroyed by fire or other calamity, or by act of God, to the extent of 75% or less, provided that the restoration is started within 1 year after the damage and diligently pursued to completion. A nonconforming building that is completely destroyed or damaged or partially destroyed in any of the above manner to a greater extent than 75%, or voluntarily razed or required by law to be razed, shall not thereafter be restored except in full conformance with all the provisions of this chapter as to building and use. The amount of the destruction shall be calculated by taking the 75% of the full assessed value of the improvement destroyed, as the value is shown on the current assessment roll of Cibola County.

(E) Pre-existing, nonconforming uses are permitted to continue. No change in the type, scale or intensity of the use is permitted.

(F) A nonconforming use which has been abandoned or discontinued for 1 year or longer shall not be allowed to resume except in conformance with the applicable requirements of this chapter.

(G) A parcel which has less area or width than required by the zone applied to the parcel may be used without a variance as a separate parcel occupied by a use permitted within that zone if:

(1) The parcel was legally created and placed on the records of the county, complying with any ordinances, regulations or requirements then applicable;

(2) The use and structure are permitted or are legally nonconforming, or if it is a new use or new constructions, which is the use, which most nearly meets lot, area and width requirements; and

(3) Keeping of animals on parcels which do not meet the minimum lot size requirements specified herein are not permitted.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

#### § 153.056 HOME OCCUPATIONS.

(A) The purpose of these performance standards is to encourage and facilitate businesses conducted in the home, which are compatible with other homes on adjacent properties.

(B) Businesses conducted within shall qualify as a home occupation if they meet the following performance standards:

(1) Primary sale of goods or services in connection with the home occupation shall be that which is prepared, performed, produced or grown on the premises;

(2) The goods, stock-in-trade, or other commodities are not displayed outside of the residence;

(3) The home occupation shall not be of a nature likely to attract visitors in larger numbers than would normally be expected in a dwelling;

(4) No more than 2 other persons, in addition to the members of the family, are employed in connection with the home occupation;

(5) No objectionable operational characteristic or effect, including noise, odor, fumes, dust, lighting, vibration, electrical disturbance, and smoke discernible at the exterior boundaries of the building site which would identify the premises as serving a nonresidential purpose;

(6) No more than 25% of the total gross floor area of the dwelling is used for home occupation purposes;

(7) No change in the outside appearance of the building or premises, or any construction feature or alteration not of a residential character;

(8) No show windows, window displays or advertising on signs, structures or vehicles on or near the site designed to attract customers, clients or the general public to the premises; and

(9) No products shall be sold on the premises except artist's originals or products individually made to order on the premises.

(C) An application for a home occupation be administratively approved by the Planning Administrator, if it satisfies the performance standards contained herein.

(1) The Planning Administrator shall issue a home occupation permit to the applicant, if the application is approved, upon payment of the applicable business license fees.

(2) If the application does not satisfy the performance standards contained herein, the Planning Administrator shall deny the application for a home occupation permit and inform the applicant of the procedure to appeal the denial.  
(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.057 TEMPORARY USES.**

(A) Certain temporary uses of property may be permitted in any district. The permit may be made contingent upon conditions and time limitations as are reasonably necessary to protect the public welfare. The violation of any condition shall be grounds for the revocation of the permit. The Planning Administrator may require guarantees to assure removal of the temporary use and of any debris or refuse resulting from the use, so as to restore the premises to the prior condition.

(B) Temporary buildings and uses incidental to the construction of a building or group of buildings on the same or adjacent premises, may be permitted in any district, where the use of temporary buildings conforms to uses permitted in the zoning district.

(C) Outdoor sale with merchandise displayed on any public right-of-way, public street or sidewalk, shall be restricted to a maximum of 5 days per sale and 6 sales per year.

(D) Any of the following uses may be permitted, subject to a specific time limit not to exceed 30 days:

(1) Neighborhood bazaar, celebration or festival in any district, when sponsored by an organized group;

(2) Open-air sale of Christmas trees;

(3) Garage sales; and

(4) Other temporary outdoor sales that meet all other conditions of this chapter and where the Planning Administrator determines that no safety hazards will result from the proposed use.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.058 LANDSCAPING, BUFFERING AND SCREENING.**

(A) *Intent.* The intent of this section is ameliorate adverse impacts between potentially incompatible uses by requiring a minimum level of buffering and screening.

(B) *Purpose.* The specific purposes of this section include:

(1) To reduce irrigation water consumption with no decline in landscape quality;

(2) To reduce the heat and glare absorbed and radiated by development;

(3) To control soil erosion;

(4) To preserve property values and the character of neighborhoods; and

(5) To encourage xeriscaping.

**(C) Required fencing.**

(1) Commercial and industrial development abutting any residential zone shall install a sound wall fence 6 feet high, which shall not extend into the required front yard area of any adjacent residential zone.

(2) All storage of building materials, junk, scrap or waste shall be screened from public view with a solid fence 6 feet high or a landscaped berm.

**(D) Location and height.**

(1) *Residential districts.* Except in the following situations, fences, and hedges in residential districts are permitted up to 6 feet in height, measured from the finished grade on the higher side of the fence.

(a) Fences or walls higher than 3 feet above the curb shall be set back at least 15 feet from the front property line.

(b) On a corner lot, fences, hedges or visual obstructions over 3 feet above the sidewalk shall be at least 5 feet back from the street side of the property line.

(c) Fences, hedges or other visual obstructions shall not be over 3 feet high above the curb on a corner lot within a triangle formed by the property lines and a line connecting those lines from points thereon which lie 20 feet from the intersection of the projected property lines.

(d) Fences or walls within the buildable areas as required for a main building are permitted up to 8 feet in height. The fences or walls shall be set back a minimum of 5 feet from any side lot line.

(e) Fences adjacent to alleys are permitted up to 7 feet in height.

**(2) Commercial and industrial districts.**

Except in the following situations, fences, and hedges in commercial or industrial districts are permitted up to 6 feet in height, measured from the finished grade on the higher side of the fence.

(a) Fences or walls higher than 3 feet shall not be built within the the required front setback.

(b) Fences, hedges or other visual obstructions shall not be over 3 feet high above the curb on a corner lot within a triangle formed by the property lines and a line connecting those lines from points thereon which lie 20 feet from the intersection of the projected property lines.

(c) Fences or walls within the buildable areas as required for a main building are permitted up to 12 feet in height, except when abutting any residential zone.

**(E) Prohibited materials.**

(1) Barbed wire, razor wire or similar fences shall not be installed within the Village of Milan except for security fences in the industrial zones which are not visible from any public street or alley.

(2) Electrified fences of any kind shall not be installed within the village.

(3) Wire mesh fences shall not be installed within the required front yard setback area or within the side yard setback area adjacent to a street in any residential zone. Wire mesh fences in the commercial zones shall not be visible from any public street or alley.

(F) *Landscaping standards.*

(1) *Applicability.* Landscaping shall be required of all nonresidential development (excluding agricultural uses), multi-family residential development, and single-family residential subdivisions (model homes only).

(2) *Preservation of vegetation.* Preservation of native, on-site vegetation shall be a primary objective of site planning for development. Specimen plants shall be given a particular consideration for retention on-site.

(3) *New plantings.* New planting materials shall be drought-tolerant and appropriate to the desert environment of the Village of Milan.

(4) *Turf.* The use of turf shall not exceed 20% of the development's landscaped area and shall be located, when used, to mitigate glare and reduce heat near buildings and to enhance pedestrian ways.

(5) *Earth berms.* Earth berms shall be designed to transition to existing grades, shall not exceed a slope of 2 to 1, and shall be adequately covered with plant materials, ground cover riprap to control erosion.

(6) *Drainage.* Natural drainage ways and existing natural vegetation may be used for screening.

(G) *Required landscaping.*

(1) All multi-family residential developments shall landscape all yard areas required by this chapter which are not specifically used in driveways, walkways, patios or similar purposes.

(2) (a) All commercial development shall provide landscaping within the areas of the development most visible from the adjacent streets.

(b) All portions of a site with over 40 square feet of area not specifically used for parking, driveways, walkways or similar purposes.

(c) Additional landscaping shall be required to fully screen exposed storage yards.

(3) (a) All industrial developments shall landscape the front and side yards areas adjacent to streets which are not specifically used for parking, driveways, walkways or similar purposes.

(b) Additional landscaping shall be required to fully screen exposed storage yards.

(4) Xeriscape landscaping is encouraged to meet the requirements listed above. (Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.059 OFF-STREET PARKING.**

(A) It is the intent of this section to require off-street parking and loading spaces on each parcel for all land uses within the Village of Milan sufficient in number to accommodate all vehicles of residents, employees, customers, clients and others, which may congregate at any point in time in order to reduce on-street parking and improve traffic and pedestrian safety.

(B) At the time any activity is established or building or structure is erected, or is enlarged, or increased in capacity, or whenever there is a substitution of activities or a change in the nature of an existing activity, off-street parking for vehicles in the numbers as are hereinafter prescribed shall be provided. Accessible off-street parking areas shall be provided and maintained for each land use or activity in accordance with the following schedule:

## Milan - Land Usage

<i>Residential Use - Off-Street Parking Requirements</i>	
Single and 2-family dwellings	2 stalls per dwelling unit, 1 of which shall be a covered carport or garage
Accessory dwelling units	1 stall per unit
Multiple family	1-1/2 stalls per dwelling unit or 2 stalls for each unit having 3 or more bedrooms, plus 1 stall for every 4 units for guests; 1 stall for each unit shall be covered with a garage or carport
Rooming houses, residence clubs	1 stall for every 2 occupants plus 4 stalls
Bed and breakfast establishments	2 stalls, 1 for which shall be a covered carport or garage, plus 1 stall per 2 guest rooms
<i>Recreational Use - Off-Street Parking Requirements</i>	
Theaters and auditoriums with fixed seats	1 stall for every 4 seats, or 1 stall for each 7 feet of bench
Auditoriums and exhibit halls without fixed seats	1 stall per 100 gross feet of bench
Dance halls	1 stall for each 5 seats or 50 square feet of dance floor, whichever is greater
Bowling centers	6 stalls per alley, plus 1 stall for each shift employee
Commercial swimming pools	1 stall per 100 square feet of pool area
Tennis and racket courts	2 stalls per court, plus 1 stall for each shift employee
Private clubs without overnight accommodations	1 stall for every 4 persons of maximum occupancy of the facility, plus 1 space for each regular employee
<i>Institutional Use - Off-Street Parking Requirements</i>	
Hospitals	1 stall for each 3 beds, plus 1 stall per staff doctor, plus 1 stall for each 3 staff
Convalescent homes, nursing homes	1 stall per staff or visiting doctor, plus 1 stall per 2 employees, plus 1 stall for every 4 beds
Day care centers and nursery schools	1 stall for each employee, plus 2 stalls, plus 1 loading space for every 5 children
Churches and mortuaries	1 stall for every 4 seats or 7 linear feet of bench
Public or private elementary schools	1 stall for each employee, plus 1 stall for every 4 auditorium seats, plus bus loading area
Public or private high schools	1 stall for each employee, plus 1 space for each 10 students of planned capacity or 1 stall for each 4 auditorium seats, whichever is greater, plus bus loading area



<i>Office, Medical, and Financial Uses - Off-Street Parking Requirements</i>	
Medical, dental, optometry, veterinarian, or chiropractic offices and clinics	1 stall per 150 square feet of gross floor area, or 6 stalls per doctor, whichever is less
Banks, lending agencies, financial and governmental institutions, public utility offices	1 stall per 300 square feet of gross floor area
All other professional offices	1 stall per 300 square feet of gross floor area
<i>Retail and Commercial Uses - Off-Street Parking Requirements</i>	
General retail sales, repair and services	1 stall per 250 square feet of gross floor area
Uncovered general retail sales, repair and services	1 stall per 250 square feet of gross floor area
Retail sales of large appliances, automobile, furniture, or other similar bulky merchandise	1 stall per 400 square feet of gross floor area
Restaurants, bars, taverns, night clubs, cocktail lounges	1 stall for every 3 seats or 100 square feet of gross floor area devoted to dining, whichever is greater, plus 1 stall for each shift employee
Restaurants and other retail establishments with take-out service, walk-up, drive up windows and roadside stands	1 stall for every 3 seats or 100 square feet of gross floor area, whichever is greater, plus 1 stall for each shift employee, plus 8 stalls or 8 auto waiting spaces for each exterior service window
Barber and beauty shops	1 stall per 100 square feet of gross floor area
Uncovered retail sales area for landscaping nurseries, vehicles and construction materials	1 stall for each 4,000 square feet of gross display area, plus 1 stall per employee, but not less than 4 stalls
Service stations and vehicle repair garages	1 stall per 400 square feet of gross floor area, plus 1 stall per employee, but not less than 3 stalls total (service bays shall not be counted as part of the required parking)
Hotels and motels	1 stall for each guest room, plus 6 stalls
<i>Industrial Uses - Off-Street Parking Requirements</i>	
Warehouses under 10,000 square feet of gross floor area	1 stall per 600 square feet of gross floor area; with a minimum of 10 stalls per parcel
Warehouses over 10,000 square feet of gross floor area	1 stall per 5,000 square feet of gross floor area; with a minimum of 10 stalls per parcel
Wholesale sales (with limited retail)	1 stall per 600 square feet of gross floor area
All manufacturing plants, light industrial uses, wholesale service establishments	1 stall per 350 square feet of gross floor area
Bicycle parking facilities shall be provided for each development requiring 10 parking spaces or more and shall be conveniently located on-site and adjacent to pedestrian routes.	

(C) (1) Where there is a combination of uses for any 1 facility on a parcel, the total required off-street parking shall be the sum of the requirements for the various uses calculated separately.

(2) The parking provided for 1 use may not be used to satisfy the parking requirements for another use on the same site, unless all of the following conditions are met:

- (a) Structures on the site clearly can be used only during limited time periods;
- (b) The uses occur during completely different periods of time;
- (c) The Planning Administrator determines there will be no conflicts or safety hazards between the proposed uses; and

(3) A conditional permit is obtained.

(D) The parking ratio shall be determined by the Planning Administrator for uses that are not specifically included, and that are not closely related to other uses included in the parking space requirement schedule.

(E) Proposed commercial buildings without uses specified shall provide 1 parking space for every 250 square feet of gross floor area.

(F) Every use shall provide the required parking on the same parcel except that the owners of adjoining properties may provide parking space in common if the parking area is secured by easement or other sufficient legal document, and provided the total number of parking spaces provided is equal to the sum of the individual needs.

(G) All residential parking stalls shall be at least 10 feet wide, 20 feet long, with a minimum of 24 feet of back-up space. One parking stall shall not be within the back-up space needed for exit from another parking stall.

(H) All other parking stalls shall conform to the following dimensions:

<i>Parking Angle</i>	<i>Stall Width</i>	<i>Stall Depth</i>	<i>One-Way Aisle</i>
90 degrees	9 feet 0 inches	20 feet 0 inches	25 feet 0 inches
	9 feet 6 inches	20 feet 0 inches	24 feet 0 inches
	10 feet 0 inches	20 feet 0 inches	24 feet 0 inches
60 degrees	9 feet 0 inches	20 feet 0 inches	19 feet 0 inches
	9 feet 6 inches	20 feet 0 inches	18 feet 0 inches
	10 feet 0 inches	20 feet 0 inches	17 feet 0 inches
45 degrees	9 feet 0 inches	20 feet 0 inches	16 feet 0 inches
	9 feet 6 inches	20 feet 0 inches	15 feet 0 inches
	10 feet 0 inches	20 feet 0 inches	14 feet 0 inches
0 degrees	20 feet 0 inches	8 feet 0 inches	12 feet 0 inches
<i>Special Skills</i>	<i>Stall Width</i>	<i>Stall Depth</i>	<i>One-Way Aisle</i>
Handicap Stall	14 feet 0 inches	20 feet 0 inches	Same As Above
Small Car Stall	8 feet 0 inches	15 feet 6 inches	Same As Above

(I) Special parking requirements follow.

(1) Compact car parking stalls may be provided in commercial or industrial developments for up to 30% of the required off-street parking where at least 15 parking stalls are provided.

(2) Handicap parking shall comply with the requirements of the State Building Code.

(3) All retail and wholesale stores, warehouses, supply houses, buildings devoted to manufacturing trade, hotels, hospitals or other buildings where large amounts of goods are received or shipped, shall provide loading and unloading space adequate to handle the volume and frequency of truck traffic to the building or shopping center. The number and minimum dimensions of loading spaces shall be determined by the Planning Administrator.

(4) Each handicap park stall shall be delineated by blue painted curb and lines and shall be clearly labeled in blue paint with the standard handicap symbol or clearly labeled for "handicapped only." Each compact car parking stall shall be clearly labeled for "compact car only." Employee parking stall shall clearly labeled for "employee only."

(5) All parking stalls abutting sidewalks, planters, buildings, and landscape shall be provided with a permanent curb, bumper, wheel stop or similar device. The stopping edge of the protective wheel stops shall be placed 2 feet from the edge of the sidewalks, planters or landscaped areas and from any buildings.

(6) All off-street parking for all uses, except single-family uses, shall be designed so that vehicles need not back out of the parking area into a public street utilizing a public alley for back-up space is acceptable.

(7) Required off-street parking for any residential use may not be located in the required front yard setback area or required side yard setback area adjacent to a street.

(8) All required parking areas shall be paved with an impervious surface except for parking stalls adjacent to an alley for single family residential uses, which may be paved with crushed rock.

(9) Any building or use whose parking becomes substandard by the adoption of this section but which were lawful prior to the adoption of this section, shall be considered a nonconforming use. The nonconforming use may continue, but any enlargement or expansion shall provide the required number of parking spaces or parking area for the entire building or use as specified in this section. Any change in occupancy or use in an existing building or lot, which requires more parking space shall provide the additional parking area as required by this section.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.060 ACCESSORY BUILDINGS, DWELLINGS AND USES.**

(A) The intent of this section is to provide regulations for buildings or structures which are not the main or primary buildings on parcels, and in which the principal use of the land does not take place.

(B) Accessory buildings are permitted in any district, whether constructed at the same time as the main building on the parcel, or subsequently.

(C) Accessory buildings in any nonresidential zone shall be built subject to all of the same restrictions as apply to the main building.

(D) Adequate buffering is required to screen all accessory buildings from the public right-of-way.

(E) Accessory dwelling units are permitted in residential zones only when they comply with the following restrictions:

(1) The unit is not intended for sale and may be rented;

(2) The lot contains existing single-family detached unit;

(3) The second unit is attached to the existing residence and is located within the living area of the existing dwelling;

(4) Whenever an increase in floor area is involved, it shall not exceed 25% if the existing living area;

(5) Any construction shall conform to height, setback, lot coverage and other zoning requirements generally applicable to residential construction in the zone in which the property is located; and

(6) The accessory unit shall be serviced by existing sewer and utility connections, no additional water, gas or electric meters shall be permitted.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

#### **§ 153.061 MOBILE HOMES AND MOBILE HOME PARKS.**

(A) The intent of this section is to provide the minimum standards necessary to ensure that mobile home parks are safe and pleasing environments for the residents of the mobile home park as well as its neighbors. Any mobile home park legally established prior to the effective date of this chapter shall be allowed to continue as a pre-existing nonconforming use with the same number of mobile home units it had prior to the effective date. Mobile homes may be removed and replaced without obtaining a conditional use permit if the total number of mobile home units does not increase. No increase in the number of mobile home units in the park shall be allowed without prior compliance with the terms of this chapter.

(B) Mobile home parks shall require a business license to operate pursuant to the applicable village regulations. Each mobile home within the mobile home park shall require a permit in conformance with the Manufactured Housing Act (NMSA § 60-14-1, 1978).

(C) An applicant for a mobile home park shall designate a duly authorized attendant or caretaker to be in charge of the mobile home park and to keep the mobile home park, its facilities and equipment in a clean, orderly and sanitary condition.

(D) The mobile home park shall provide spaces that are well defined and delineated.

(1) Minimum lot size per mobile home unit shall be 4,000 square feet.

(2) Each mobile home space shall be required to maintain the following yard areas:

(a) Side to side spacing between mobile homes shall be at least 20 feet; and

(b) Back-to-back spacing shall be at least 15 feet.

(3) The distance between any mobile home and any building shall be at least 20 feet.

(4) A 20-foot setback from the interior streets of the mobile home park shall be maintained, which may be used for off-street parking.

(5) The average width for each mobile space shall be 40 feet.

(6) Minimum setbacks and distances between mobile homes must be maintained.

(7) A mobile home shall be located at least 25 feet from the right-of-way line of any public street, and at least 10 feet from any property line of the mobile home park.

(E) There shall be at least 2 automobile off-street, paved parking spaces for each mobile home unit. Parking may be tandem or side-by-side parking.

(F) Landscaping or fencing (6 feet in height) shall be provided around perimeter of the mobile home park to adequately screen the mobile home park from adjacent land uses.

### § 153.063 TRAILERS AND RECREATIONAL VEHICLES.

(A) It is the intent of this section to establish regulations that apply to the storage and parking of trailers and recreational vehicles in the village.

(B) An operable recreational vehicle or trailer may be parked for storage in all zones as follows.

(1) Enclosed parking is permitted inside any enclosed structure, which structure otherwise conforms to the zoning requirements of the particular zone where it is located;

(2) Parking not in a enclosed structure is permitted uncovered in a side yard or in a rear yard, provided such parking is not nearer than 2 feet to the lot line. A recreational vehicle may be parked temporarily anywhere on the property during active loading and unloading;

(3) Parking is for storage purposes only, and any recreational vehicle or trailer shall not be:

(a) Used for dwelling purposes;

(b) Permanently connected to sewer lines, water lines, or electricity except for a temporary electrical connection for the charging batteries and other related purposes; or

(c) Used for storage of goods, materials, or equipment other than those items considered to be part of the unit or essential to its immediate use.

(4) In residential zones, recreational vehicles shall be parked for storage only on property on which the vehicle's owner resides. Such parking is permitted outside a structure in the rear or side yard. Recreational vehicles can only be parked in the front yard if on a paved or graveled driveway and provided that all of the following conditions exist:

(a) Space is not available in the rear yard or side yard, or the lot is not on a corner and has no reasonable access to either the side yard or rear yard;

(b) Inside parking is not possible;

(c) The vehicle is parked perpendicular to the front lot line;

(d) No part of the vehicle extends over the public sidewalk or public thoroughfare (right-of-way);

(e) No more than 1 recreational vehicle or trailer is parked in the front yard of each residential unit;

(f) The vehicle is parked at least 5 feet from the side lot line.

(Ord. 216, passed 3-22-2007)

### § 153.064 YARDS.

(A) It is the intent of this section to establish regulations which apply to yard areas of parcels within the village.

(B) Every building hereafter constructed upon a building site shall be located on the site so as to provide for the yards specified in the regulations for the district in which the site is located.

(1) Every front or rear yard shall extend along a lot line the full width of the lot, and every such side yard shall extend along a lot line from the front yard or the front lot line to the rear yard. A required yard shall be open and unobstructed, except as otherwise provided herein. The required minimum depth or width of any yard shall be measured generally at the right angles to the lot line and from the nearest point of the building.

(2) Where the building wall is not parallel to a side or a rear lot line the required least dimension of the side yard or the rear yard along such line may be applied to the average, provided that no such side yard shall be less than 3 feet in width at any point, and no such rear yard shall be less than 10 feet in depth at any point.

(C) The following exceptions shall apply to all required yards:

(1) In any residential district where 25% percent or more of the lots in any block, exclusive of the frontage along the side of a corner lot, has been improved with at least 6 buildings at the time of the passage of this chapter (or any prior ordinance) and the front yards on such lots vary in depth to an extent not greater than 6 feet, then the required front yard depth for such district shall be disregarded in such block and in lieu thereof the front yard required on each lot in such block shall be of a depth not less than the average depth of the front yards on the lots on which are located such existing buildings.  
(Ord. 216, passed 3-22-2007)

**§ 153.065 [RESERVED].**

***ADMINISTRATION***

**§ 153.080 BOARD OF TRUSTEES.**

In addition to the responsibilities conferred by New Mexico Statutes upon the Board as the governing body of the village, the Board shall have the following powers and duties under the provisions of this chapter:

(A) To approve members of the Planning and Zoning Commission as nominated by the Mayor and to assign appropriate planning-related projects to the Commission for review and advice;

(B) To hire the Code Enforcement Officer (CEO) and review his/her performance and duties in conformance with the personnel regulations of the village;

(C) To hire the Planning Administrator and review his/her performance and duties in conformance with the personnel regulations of the village;

(D) To accept and enforce written decisions of the Commission unless an appeal is timely filed;

(E) To hear and decide appeals of decisions of the Commission;

(F) To enact amendments to the chapter and the map as appropriate;

(G) To interpret the provisions of this chapter and the map; and

(H) To establish from time to time such policies and rules as it may deem necessary to assure the proper administration and enforcement of this chapter.  
(Ord. 216, passed 3-22-2007)

**§ 153.081 PLANNING AND ZONING COMMISSION.**

(A) The Commission shall consist of 5 members, all but 1 of whom shall be residents of the village. The 1 exception may be an individual residing in a

[Text resumes on pg. 54]



residence receiving water service from the village. All members shall be appointed by the Mayor with the consent of the Board. Initially 3 members will be appointed for 3-year terms and 2 members will be appointed for 2-year terms. Members may be re-appointed by village for unlimited terms. Members shall generally be appointed during the month of June.

(B) Annually, in July, or more frequently at the pleasure of the Commission, the members of the Commission shall elect a chairperson, a vice-chairperson and any other officials which seem appropriate by a majority vote. The Chairperson or Vice-Chairperson may form subcommittees of the members of the Commission in order to expedite the planning process and to carry out the duties and the responsibilities of the Commission.

(C) The Commission shall adopt rules and regulations for the conduct of business as seem appropriate to its members and make available for review by the public such rules and regulations. A quorum of 3 members of the Commission shall be required to take any action or make any decisions. All actions may be decided by a simple majority of those present.

(D) Any member of the Commission who has a financial interest in the outcome of any policy, decision or determination before the Commission on which s/he serves shall, as soon as possible after such interest becomes apparent, disclose to each of the other members of the nature of his/her financial interest in the issue and shall be disqualified from participating in any debate, decision or vote relating on the matter.

(E) The Commission shall hold its meetings in conformance with the Open Meetings Act (NMSA §§ 10-15-1 through 10-15-4). Regardless, the Commission shall meet at least quarterly. The Commission may hold additional meetings as may be called by the Chairperson or Vice-Chairperson. All meetings will be open to the public unless closed as allowed by applicable provisions of the Open Meetings Act.

(F) The Planning Administrator or his/her designee shall keep minutes of all meetings of the Commission. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and voted taken that show how each member voted. The minutes shall be kept available for public inspection at reasonable times. The minutes must be presented to members of the Commission within 10 working days after the meeting.

(G) In addition to its general duties and responsibilities, the Commission shall specifically undertake the following:

(1) To initiate, review and make recommendations to the Board concerning the preparation, update and/or amendments to the Comprehensive Plan for the village;

(2) To administer and enforce the provisions of this chapter as provided herein;

(3) To review and make recommendations to the Board concerning amendments to the map and to the text of this chapter;

(4) To review and make recommendations on requests for annexation;

(5) To promote understanding among public officials as well as the residents of the village on matters as set forth in this chapter;

(6) To review and decide to approve, conditionally approve or deny applications for development according to the requirements of this chapter;

(7) To hold a public hearing on any appeal to an administrative decision of the Planning Administrator or CEO when it is alleged that there is an error in the order, requirement or determination made by the Planning Administrator or CEO, and to reverse, affirm or modify the administrative decision of the Planning Administrator or CEO; and



(C) The following exceptions shall apply to all required yards: in any residential district where 25% or more of the lots in any block, exclusive of the frontage along the side of a corner lot, has been improved with at least 6 buildings at the time of the passage of this chapter, and the front yards on the lots vary in depth to an extent not greater than 6 feet, then the required front yard depth for the district shall be disregarded in the block and in lieu thereof the front yard required on each lot in the block shall be of a depth not less than the average depth of the front yards on the lots on which are located the existing buildings.

(Ord. 206, passed 4-21-2005) Penalty, see § 10.99

**§ 153.065 HAZARDOUS MATERIAL STORAGE.**

(A) (1) *Generally.* Hazardous materials and wastes shall not be released into a sewer, on-site liquid waste disposal system, storm drain, ditch, drainage canal, lake or river or upon the ground, sidewalk, street, highway or into the subsurface or atmosphere.

(2) *Exceptions.*

(a) Pesticide products and materials intended for use in weed abatement, pest control, erosion control, soil amendment or similar applications when applied in accordance with the manufacturer's instructions, and in accordance with nationally recognized standards.

(b) Materials released in accordance with federal, state or local governing regulations with a National Pollutant Discharge Elimination System Permit, with waste discharge requirements established by the New Mexico Quality Commission or with local sewer pretreatment requirements.

(B) (1) Hazardous materials and wastes are those chemicals or substances listed in Table 2.

(2) Included are materials that pose physical hazards or health hazards, regardless of whether the materials are in usable or waste condition.

(3) The tabulated materials are a subset of those classified as hazardous materials in Article 80 of the 1991 Uniform Fire Code.

(C) Conditional use permits shall be required to manufacture, store, dispense, use or handle hazardous materials and wastes at facilities for which the following conditions apply:

(1) The facility is located within a crucial area; and

(2) (a) Hazardous materials and wastes are hazardous materials and wastes are present in excess of quantities listed in Table 2.

(b) The permit shall not take the place of any license required by law.

(D) (1) The Planning and Zoning Commission shall review and approve plans and issue a permit prior to issuance of building permits for new construction and major remodeling.

(2) Permits shall also be issued prior to commencement of new business activities in existing facilities.

(E) (1) Permits shall no be transferable and any change in use, occupancy, operation or ownership shall require a new permit.

(2) Permits shall be renewed annually.

(F) The Planning and Zoning Commission is authorized to suspend or revoke a permit when it is determined after a hearing that:

(1) The permit has been used by a person other than the person to whom the permit was issued;

(2) The permit has been used for a location other than that for which it was issued;

(3) Any of the conditions or limitations set forth in the permit, have been violated;

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(4) The permittee failed, refused or neglected to comply with orders or notices duly served;

(5) There has been a false statement or misrepresentation to a material fact in the application or plans on which the permit or application was based; and

(6) The permittee has caused an unabated release of hazardous materials to the environment.

(G) No quantity greater than 55 gallons of any material listed below shall be stored within 400 feet of any residential district or water well of the Village of Milan.

<i>Table 2</i>	
<i>Hazardous Materials Stockpile Definition</i>	
Material*	Minimum Quantity**
Carcinogens	10 pounds
Combustible	55 gallons
Flammable liquids	55 gallons
Corrosive liquids	55 gallons
Highly toxic liquids and solids	Any amounts
Oxidizing liquids	55 gallons
Oxidizing solids	500 pounds
Other health hazards	
Liquids	55 gallons
Solids	500 pounds
Toxic liquids	55 gallons
Toxic solids	55 gallons
*Additional information regarding this classification of hazardous materials is provided in Appendix VI-A of the 10991 Uniform Fire Code	
** Quantities (stored or handled in crucial areas) exceeding this amount is subject to permit requirements.	

(Ord. 206, passed 4-21-2005) Penalty, see 10.99

**ADMINISTRATION**

**§ 153.080 BOARD OF TRUSTEES.**

In addition to the responsibilities conferred by New Mexico Statutes upon the Board of Trustees as the governing body of the Village of Milan, the Board of Trustees shall have the following powers and duties under the provisions of this chapter:

(A) To approve members of the Planning and Zoning Commission appointed by the Mayor and to assign appropriate planning-related projects to the Planning and Zoning Commission for review and advice;

(B) To hire the Code Enforcement Officer and review his or her performance and duties in conformance with the personnel regulations of the village;

(C) To hire the Planning Administrator and review is performance and duties in conformance with the personnel regulations of the village;

(D) To accept written decisions of the Planning and Zoning Commission for the record, unless an appeal is timely filed;

(E) To hear and decide appeals of administrative decisions and decisions of the Planning and Zoning Commission when it is alleged that there is an error in the order, requirement or determination made by the Planning and Zoning Commission;

(F) To enact amendments to the chapter and the official zoning map;

(G) To interpret the provisions of this chapter and the official zoning map;

(H) To establish from time to time policies and rules not in conflict with other laws as it may deem necessary to assure the proper administration and enforcement of this chapter; and

(I) Any member of the Board of Trustees who has a financial interest in the outcome of any policy, decision or determination before the Board of Trustees on which he or she serves shall, as soon as possible after the interest becomes apparent, disclose, to each of the other members the nature of his or her financial interest in the issue and shall be disqualified from participating in any debate, decision or vote relating to the matter.  
(Ord. 206, passed 4-21-2005)

**§ 153.081 PLANNING AND ZONING COMMISSION.**

(A) The Planning and Zoning Commission shall consist of 5 members, all of whom shall be residents of the Village of Milan, appointed by the Board of Trustees. Three members will be appointed for a 3-year term and 2 members will be appointed to a 2-year term. Members may be re-appointed by the Board of Trustees.

(B) Annually, in January, or more frequently at the pleasure of the Commission, the members of the Planning and Zoning Commission shall elect a Chairperson, a Vice Chairperson and any other officers which seem appropriate by a majority vote. The Chairperson or Vice Chairperson may form subcommittees of the members of the Planning and Zoning Commission in order to expedite the planning process and to carry out the duties and the responsibilities of the Commission.

(C) (1) The Planning and Zoning Commission shall adopt rules and regulations for the conduct of business as seem appropriate to its members and publish rules and regulations. A quorum shall be required to take any action or make any decisions. All actions may be decided by a simple majority of those present.

(2) Any member of the Planning and Zoning Commission who has a financial interest in the outcome of any policy, decision or determination before the Planning and Zoning Commission on which he or she serves shall, as soon as possible

after the interest becomes apparent, disclose to each of the other members of the nature of his or her financial interest in the issue and shall be disqualified from participating in any debate, decision or vote relating on the matter.

(D) The Planning and Zoning Commission may, if deemed necessary, hold regularly scheduled meetings in conformance with the Open Meetings Act (NMSA §§ 10-15-1 through 10-15-4, 1978). However, the Commission shall meet at least quarterly. The Commission may hold additional meetings as may be called by the Chairperson or Vice Chairperson with at least 24-hours' notice to members and the public. All meetings will be open to the public, unless closed pursuant to the requirements of the Open Meetings Act. The agenda for each meeting shall be posted and made available at least 24 hours in advance of the meeting except for emergency matters.

(E) The Planning Administrator or his or her designee shall keep minutes of all meetings of the Planning and Zoning Commission. The minutes shall include at a minimum of the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. The minutes shall be kept available for public inspection at reasonable times.

(F) The Planning and Zoning Commission shall study all issues, which may have an impact on the future growth, development and preservation of the environment of the Village of Milan. The Planning and Zoning Commission shall prepare and recommend necessary plans, policies and regulations pertaining to the growth, development and preservation of the Village of Milan, such as the annual capital improvements plan (CIP). These plans, policies and regulations shall be forwarded to the Board of Trustees for its consideration and adoption.

(G) In addition to its general duties and responsibilities, the Planning and Zoning Commission shall specifically undertake the following:

(1) To initiate, review and make recommendations to the Board of Trustees concerning the preparation, update and/or amendments to the comprehensive plan;

(2) To administer and enforce the provisions of this chapter as provided herein;

(3) To review and make recommendations to the Board of Trustees concerning amendments to the official zoning map and to the text of this chapter;

(4) To review and make recommendations to the Board of Trustees on requests for annexations;

(5) To promote understanding of planning and environmental matters among public officials as well as the residents of the Village of Milan;

(6) To review and decide to approve, conditionally approve or deny applications for development, according to the requirements of this chapter; and

(7) To hold a public hearing on any appeal to an administrative decision of the Planning Administrator when it is alleged that there is an error in the order, requirement or determination made by the Planning Administrator, and may reverse, affirm or modify the administrative decision of the Planning Administrator.

(H) The Planning and Zoning Commission shall have the power to decide any question involving the interpretation of any provision of this chapter. Its decision shall be final unless an appeal is taken to the Board of Trustees.

(I) The Planning and Zoning Commission shall have the authority to recommend from time to time policies and rules not in conflict with other laws as it may deem necessary to assure the proper administration and enforcement of this chapter. These policies and/or rules shall be forwarded to the Board of Trustees for consideration and adoption. (Ord. 206, passed 4-21-2005)

**§ 153.082 PLANNING ADMINISTRATOR.**

(A) The Planning Administrator shall assist the Planning and Zoning Commission with the administration of this chapter and shall have the following duties and responsibilities:

- (1) To receive applications for processing pursuant to the terms of this chapter and to determine if the applications are complete;
- (2) To review and make administrative decisions for the disposition of applications for home occupation permits, sign permits, mobile home installation permits and site plan review certifications;
- (3) To review and make recommendations to the Planning and Zoning Commission regarding applications for conditional use permits, variances, beneficial use determinations and amendments to the official zoning map and to the text of this chapter;
- (4) To ensure that adequate public notice is provided pursuant to the terms of this chapter;
- (5) To maintain the permanent files of each application and for each enforcement action undertaken pursuant to the provisions of this chapter;
- (6) To maintain the official zoning map;
- (7) To initiate requests to the Village Attorney to institute proceedings against violators of this chapter; and

(8) To review, as necessary, but at least every 5 years, the comprehensive plan and this chapter and recommend amendments to the Planning and Zoning Commission and the Board of Trustees.

(B) The Planning Administrator shall coordinate with other local, regional, state and federal planning and permitting processes affecting development in the Village of Milan and shall serve as liaison to the local, regional, state and federal planning agencies having jurisdiction over village development. (Ord. 206, passed 4-21-2005)

**§ 153.083 CODE ENFORCEMENT OFFICER.**

(A) The Code Enforcement Officer shall assist the Planning and Zoning Commission with the administration of this chapter and shall have the following duties and responsibilities:

- (1) To inspect buildings, uses, developments or other activities for compliance with this chapter;
- (2) To make investigations and written reports as the Planning and Zoning Commission, the Board of Trustees and/or the Planning Administrator may direct;
- (3) To enforce all laws relating to the construction, alteration, repair, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures; and
- (4) To issue notices and orders as may be deemed necessary for the purpose of enforcing compliance with the provisions of this chapter.

(B) The Code Enforcement Officer shall report to the Planning Administrator concerning his or her duties and responsibilities undertaken pursuant to this chapter. (Ord. 206, passed 4-21-2005)

**§ 153.084 VILLAGE ATTORNEY.**

In addition to the jurisdiction, authority and duties which may be conferred upon the Village Attorney by other provisions of the Milan Municipal Code, the Village Attorney shall have the following authority and duties under this chapter:

(A) To review for form, all written findings of fact and resolutions drafted by the Planning and Zoning Commission and staff in connection with any requirements of this chapter;

(B) To review for form, all development agreements, easements, declarations of covenants, letters of credit, performance guarantees or other documentation in connection with any requirements of this chapter;

(C) To advise the Board of Trustees, the Planning and Zoning Commission, the Planning Administrator, the Code Enforcement Officer and other village staff members in regard to the legal issues, which may arise during the implementation and enforcement of this chapter;

(D) To initiate legal proceedings against violators of this chapter as directed by the Board of Trustees; and

(E) To ensure that the public hearings required by this chapter are conducted in the manner required by law.

(Ord. 206, passed 4-21-2005)

**§ 153.085 PROCEDURAL CHART.**

<i>Table 3</i>			
<i>Procedural Chart</i>			
D = Decides R = Recommends (H) = Public Hearing A = Appeal, 1 = first appeal 2 = second appeal			
<i>Type of Application</i>	<i>Planning Administrator</i>	<i>Planning and Zoning Commission</i>	<i>Board of Trustees</i>
Amendment of the Zoning Chapter		R (H)	D (H)
Amendment of the official zoning map		R (H)	D (H)
Appeals		A (H) <sub>1</sub>	A (H) <sub>2</sub>
Beneficial use determinations	R	R (H)	D (H)
Conditional use permit	R	D (H)	A (H)
Home occupation permits	D	A (H) <sub>1</sub>	A (H) <sub>2</sub>
Interpretation of the Zoning Chapter	D	A <sub>1</sub>	A <sub>2</sub>

<i>Table 3 (Cont'd)</i>			
<i>Type of Application</i>	<i>Planning Administrator</i>	<i>Planning and Zoning Commission</i>	<i>Board of Trustees</i>
Mobile home installation permits	D	A (H) <sub>1</sub>	A (H) <sub>2</sub>
Sign permits	D	A (H) <sub>1</sub>	A (H) <sub>2</sub>
Site plan review certification	D	A (H) <sub>1</sub>	A (H) <sub>2</sub>
Variance	R	D (H)	A (H)

(Ord. 206, passed 4-21-2005)

**§ 153.086 APPLICATION AND FEES.**

(A) (1) Applications shall be made on forms provided by the village.

(2) When the applicant is not the owner of record, the application shall be accompanied by an owner's affidavit approving of the application and authorizing the agent to act on the owner's behalf in processing the application. When the owner of record resides out-of-state, the affidavit shall designate a local agent capable of receiving notices and service of process.

(B) The applicant may request an informal pre-application conference with the Planning Administrator.

(1) The purpose of the pre-application conference is to expedite the application process, to reduce design and development costs, and to assist the applicant in understanding the requirements and procedures of this chapter.

(2) No fee shall be required at the pre-application stage.

(3) Neither the applicant, the village staff nor the Board of Trustees shall be bound by any statements or determinations made during the pre-application conference. Any time limits imposed by this chapter will not be applicable to the pre-application conference.

(C) Applications shall be submitted to the Planning Administrator, who shall have responsibility for determining whether the submitted application is complete.

(1) If the Planning Administrator deems the application complete, the time frames herein for review and action shall begin.

(2) If the Planning Administrator determines that the application is not complete, he or she shall provide the applicant with a written statement within 10 days of submission of the application of the additional items required to complete the application.

(3) No review or hearings shall be conducted for incomplete applications.

(D) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants.

(1) Applications shall not be deemed complete unless the applicable fee is paid.

(2) Reasonable fees for consultants (planners, architects, engineers and other qualified professionals) may be charged in those cases where the proposed development is extremely complex and necessitates a higher level of review beyond the scope of expertise and resources of village staff.

(3) The amount of the fees shall be established by resolution of the Board of Trustees filed in the office of the Village Clerk.

(4) Fees shall not be refunded for applications that are withdrawn or denied.

(E) All applications filed pursuant to this chapter shall be numbered consecutively in the order of their filing and shall become a part of the permanent records of the Planning Administrator.

(1) The permanent records shall include copies of all notices and actions with certificates and affidavits of posting, mailing or publications pertaining to the application.

(2) A summary of all pertinent testimony offered at public hearings held in connection with an application filed pursuant to this chapter, and the names of persons testifying at the hearing, shall be a part of the permanent records.

(F) Applications for permits or approvals, pursuant to this chapter, shall be deemed to have been abandoned when information and/or fees necessary for the completion of the application have been requested in writing and not received by the Planning Administrator within 90 days of notification.

(1) The applicant may request (within the 90-day time period) an extension of up to 180 days.

(2) No further action shall be taken on an application and no fees will be refunded once the application is abandoned.

(Ord. 206, passed 4-21-2005)

#### § 153.087 COMPUTATION OF TIME.

Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday or legal holiday, that day shall be excluded. When the period time prescribed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded.

Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice of paper is served by mail, 3 days shall be added to the prescribed period.

(Ord. 206, passed 4-21-2005)

#### § 153.088 NOTICE REQUIREMENTS.

(A) Notices required pursuant to this chapter shall conform to the requirements of state law and this section in order to afford the applicant, the public and interested citizens an opportunity to fully participate in the processes required hereunder.

(B) The Planning Administrator, upon certifying that the application is deemed complete, shall place the application on the agenda (either for the Planning and Zoning Commission the Board of Trustees, whichever is applicable) for a public hearing which permits sufficient time for 15-days' notice.

(C) (1) The Planning Administrator shall prepare a summary of the application, the permanent record and his or her recommendation.

(2) This summary shall be provided to either the Planning and Zoning Commission or the Board of Trustees, as the case may be, and the applicant no later than 5 days prior to the public hearing at which the application will be considered.

(D) All notices required by this section shall include the date, time and place of hearing, a brief description of the application to be considered and the place where copies of the application may be examined.

(E) (1) The Planning Administrator shall give notice of a public hearing as follows.

(2) Notice of any public hearing required by this chapter shall be given to the applicant and any other person who makes a written request for notice by mailing a notice to those persons at least 7 days prior to the public hearing.



(a) *Amendments to the official zoning map.* In addition to the other notices required by this section, notice for amendments to the official zoning map shall be given to all owners of property within the area proposed to be changed and to all owners of property within 100 feet of the exterior boundaries of the area proposed to be changed, using for this purpose the last known name and address of the owners shown in the records of the County Assessor.

(b) *Notice.* Notice shall also be given in a newspaper of general circulation in the area at least 15 days before the date of the hearing.

(c) *Effort to give notice.* Reasonable effort shall be made to give notice to all persons who have made a written request to the Planning Administrator for advance notice of the hearings.

(F) The applicant shall post and maintain 1 or more signs regarding the public hearing, as provided by the Planning Administrator, at least 15 days before the date of the hearing. The sign(s) shall be posted in a location visible from the nearest public right-of-way. The applicant shall be responsible for removing the sign(s) within 5 days following the hearing. Failure to properly post signs is grounds for deferral or denial of the application.

(G) An advertised hearing may be continued to a time and place announced at the hearing without advertising or reposting signs.

(H) Amendments to the official zoning map and the text of this chapter shall be by ordinance. Following approval of the amendment, the Planning Administrator shall publish the title and general summary of the ordinance 1 time in a newspaper of general circulation. The ordinance shall be effective 5 days after the publication.  
(Ord. 206, passed 4-21-2005)

**§ 153.089 CONDUCT OF HEARINGS.**

(A) The Planning Administrator shall prepare summary minutes of all public hearings conducted pursuant to this chapter and they shall be kept

available for public inspection. A copy of the summary minutes shall be kept in the permanent file for the application.

(B) The decision maker (the Board of Trustees or the Planning and Zoning Commission, as the case may be) shall neither:

(1) Communicate, directly or indirectly, with any party or his or her representatives in connection with the merits of any issue involved;

(2) Use nor rely upon any communication, reports, staff memos or other materials prepared in connection with the particular case unless it is made a part of the record; or

(3) Inspect the site with any party or his or her representative.

(C) The decision-maker may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony. All testimony at the hearing shall be under oath or affirmation. Cross-examination shall be permitted.

(D) The decision-maker may either render a decision following the close of public testimony or take the matter under advisement and render a decision at the next regularly scheduled meeting.  
(Ord. 206, passed 4-21-2005)

**PERMITS**

**§ 153.100 BUILDING PERMITS.**

(A) (1) A building permit shall be required for all construction within the Village of Milan as specified in the Uniform Building Code.

(2) Applications for building permits are reviewed and approved or denied by the Construction Industries Division (CID) of the State of New Mexico.

(B) Applicants for a building permit shall be required to present a site plan review certification to CID prior to issuance of a building permit and prior to the commencement of any construction activities. (Ord. 206, passed 4-21-2005)

#### **§ 153.101 MOBILE HOME INSTALLATION PERMITS.**

(A) A mobile home installation permit shall be required prior to the placement of any mobile home in the village. An application for a mobile home installation permit shall be submitted to the Planning Administrator on the form(s) prescribed by the village.

(B) Prior to issuance of a mobile home installation permit, the applicant shall provide a copy of the permit issued by the New Mexico Manufactured Housing Division in conformance with the Manufactured Housing Act.

(C) The Planning Administrator shall have the responsibility to review the application and to issue a mobile home installation permit if the application meets the requirements of this chapter. (Ord. 206, passed 4-21-2005)

#### **§ 153.102 SITE PLAN REVIEW CERTIFICATION.**

(A) For the purpose of ensuring that land use or construction activities are compatible with the requirements of this chapter, a site plan review certification shall be required prior to the commencement of any land use or construction within the Village of Milan.

(B) An application for site plan review shall be presented to the Planning Administrator on the form(s) prescribed by the village. The Planning Administrator shall have the responsibility to review the application and to issue a site plan review certification if the application meets the requirements of this chapter.

(C) The decision of the Planning Administrator is final unless an appeal is taken to the Planning and Zoning Commission, as provided herein.

(D) The Planning Administrator shall approve the site plan only after determining the following:

(1) The proposed use is permitted by this chapter;

(2) The dimensional arrangement of the buildings and structures within the lot for which the site plan is prepared conform with the development standards of this chapter; and

(3) The lot, which is the requested location for the proposed use, has been created in compliance with state and local subdivision requirements. (Ord. 206, passed 4-21-2005)

#### **§ 153.103 SIGN PERMITS.**

(A) Permits shall be required for all signs in the Village of Milan, except those specifically exempted. No sign, outdoor advertising structure, billboard or display shall be erected, installed, located or maintained in any zoning district, except in conformance with these regulations and the approved sign permit. Additional signs and relocations or alterations of existing signs after the sign permit has been issued must conform to and be approved in the same manner as the original application. A building permit from CID may also be required.

(B) All applications for sign permits shall be accompanied by sketches and diagrams of suitable scale and clarity to fully describe the design, dimensions, proposed placement, structural and electrical characteristics and appearance of the sign or signs.

(C) An application for a sign permit shall be presented to the Planning Administrator on the form(s) prescribed by the village. The Planning

Administrator shall have the responsibility to review the application and to issue a sign permit if the application meets the requirements of this chapter.

(D) The decision of the Planning Administrator is final unless an appeal is taken to the Planning and Zoning Commission, as provided herein.

(E) Signs, which are not constructed in conformance with the sign, permit application, drawing and diagrams shall be deemed not to have been issued a valid sign permit.

(F) If the work as authorized under the approved sign permit has not been completed within 6 months after the date of its issuance, the permit shall become null and void.

(Ord. 206, passed 4-21-2005)

**§ 153.104 HOME OCCUPATION PERMITS.**

(A) For the purpose of ensuring that businesses and occupations conducted within the homes are compatible with the requirements of this chapter, a home occupation permit shall be required prior to the commencement of any home occupation.

(B) An application for a home occupation permit shall be submitted to the Planning Administrator on the form(s) prescribed by the village. The Planning Administrator shall have the responsibility to review the application and to issue a home occupation permit if the application meets the requirements of this chapter.

(C) The decision of the Planning Administrator is final unless an appeal is taken to the Planning and Zoning Commission, as provided herein.

(Ord. 206, passed 4-21-2005)

**§ 153.105 CONDITIONAL USE PERMITS.**

(A) In order to give the district use regulations the flexibility necessary to achieve the objectives of the comprehensive plan, in certain districts conditional uses are allowed, subject to the granting of a conditional use permit. Because of their

unusual characteristics, conditional uses require special consideration, so they may be located properly with respect to their effects on surrounding properties. In order to achieve these purposes, the Planning and Zoning Commission is empowered to grant or deny applications for conditional use permits and to impose reasonable conditions upon granting a conditional use permit.

(B) An application for a conditional use permit shall be filed with the Planning Administrator on the form(s) prescribed by the village. The Planning Administrator, upon certifying that the application is complete, shall place the request on the Planning and Zoning Commission's agenda for a public hearing, which permits sufficient time for 15-days' notice.

(C) Following completion of the public hearing, the Planning and Zoning Commission may grant an application for a conditional use permit if the following findings are made:

(1) The proposed location of the conditional use is in accord with the objectives of this chapter and the purposes of the district in which the site is located;

(2) The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity; and

(3) The proposed conditional use will comply with each of the applicable provisions of the chapter.

(D) A conditional use permit may be revocable, may be granted for a limited time period or may be granted subject to conditions as the Planning and Zoning Commission may prescribe. The Planning and Zoning Commission may deny an application for a conditional use permit.

(E) A conditional use permit shall become effective upon the expiration of 20 days following the date on which the permit is granted unless an appeal has been taken to the Board of Trustees.

(F) A conditional use permit may be renewed for an additional period of time provided that prior to expiration of the original permit, an application for renewal of the use permit is filed with the Planning Administrator. The Planning and Zoning Commission may grant or deny an application for renewal of a conditional use permit.

(G) Upon violation of any applicable provisions of this chapter or, if granted subject to a condition or conditions, upon failure to comply with the condition or conditions, a conditional use permit shall be suspended automatically. The Planning and Zoning Commission shall call a public hearing within 60 days of the suspension and, if not satisfied that the regulation or condition is being complied with, may revoke the conditional use permit or take action as may be necessary to ensure compliance.

(H) A conditional use permit shall run with the land and shall continue to be valid upon change of ownership of the site or structure, which was the subject of the conditional use permit application. (Ord. 206, passed 4-21-2005)

### ***APPEALS, VARIANCES AND BENEFICIAL USE DETERMINATIONS***

#### **§ 153.120 APPEALS.**

(A) No permit, certificate or other form of authorization shall be issued for any applications approved pursuant to this chapter until the time period to file an appeal has expired.

(B) An aggrieved person may file an appeal within 20 days of the decision being appealed. The following persons may be considered aggrieved and deemed to have a personal or pecuniary interest or property right adversely affected by the decision, which right or interest is more than merely nominal or remote:

- (1) The applicant;

- (2) Persons who were parties or could have been parties at the public hearing before the Planning and Zoning Commission;

- (3) Persons who own a property interest within 100 feet of the subject-site, excluding public right-of-way;

- (4) Organized neighborhood association, which has filed its articles of incorporation, bylaws or other document indicating its existence, if the boundaries of the organization include any part of the subject parcel or any land within 100 feet thereof, excluding public right-of-way.

- (5) The Board of Trustees may initiate an appeal by its motion made within 20 days of the decision being appealed from.

(C) Applications for an appeal shall be filed with the Village Clerk and shall clearly articulate the reasons for the appeal. The reasons shall specifically cite and explain 1 or more alleged errors:

- (1) In applying adopted village plans, policies and ordinances in arriving at the decision;

- (2) In the facts considered at the public hearing; and

- (3) In acting arbitrarily or capriciously or manifestly abusive of discretion.

(D) The Board of Trustees may hold a public hearing on the entire record sent to it and reverse, affirm or modify the decision appealed.

- (1) If it appears to the Board of Trustees that some additional evidence is necessary for the proper disposition of the matter, it may allow evidence to be taken.

- (2) The Board of Trustees may remand the matter to the Planning and Zoning Commission for reconsideration. If the matter is remanded, the Board of Trustees shall state specifically the matters to be reconsidered and the reasons for the remand on which the action is based.

(E) The Board of Trustees, as the appellate body, shall state its decision and adopt findings of fact at the conclusion of the public hearing at which the appeal is considered, or the Board of Trustees may postpone its decision until its next scheduled meeting.

(1) The Board of Trustees may reverse any order, requirement, decision or determination of the Planning Administrator or the Planning and Zoning Commission.

(2) The Board of Trustees may decide in favor of the appellant.

(3) The Board of Trustees may make any change in any order, requirement, decision or determination of the Planning Administrator or the Planning and Zoning Commission.

(F) Within 15 days from the date of the decision of the Board of Trustees, the Planning Administrator shall notify the applicant of the decision in writing.

(G) Action by the Board of Trustees on an appeal shall be final and conclusive.  
(Ord. 206, passed 4-21-2005)

**§ 153.121 VARIANCES.**

(A) The Planning and Zoning Commission shall have the power to grant variances from the requirements of this chapter as may be reasonable and within the general purpose and intent of this chapter. Variances shall be granted sparingly because this chapter is designed to provide the maximum amount of flexibility in the development process while ensuring that the public health, safety and general welfare are preserved.

(B) Application for variances shall be filed with the Planning Administrator on the forms(s) provided for that purpose. The application shall state the specific provision of this chapter for which a variance is sought.

(C) (1) The Planning Administrator, upon certifying that the requirements of division (B) above have been met, shall place the request on the Planning and Zoning Commission's agenda for a public hearing, which permits sufficient time for 15 days notice.

(2) The Planning Administrator shall prepare a start report containing his or her recommendation regarding the appeal. This report shall be provided to the Planning and Zoning commission and the applicant no later than 5 days prior to the public hearing at which the application for a variance will be considered.

(D) A variance may be granted if strict enforcement of the chapter would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of this chapter will be observed, public safety and welfare secured, and substantial justice done. This conclusion can be reached if any of the following findings can be made:

(1) If the applicant complies strictly with the provisions of the chapter, can make no reasonable use of his or her property;

(2) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;

(3) The hardship relates to the applicant's land, rather than personal circumstances;

(4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;

(5) The hardship is not the result of the applicant's own actions;

(6) The variance will neither result in the extension of a nonconforming situation in violation of (cite) nor authorize the initiation of a nonconforming use of land;

(7) The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this chapter and shall not be injurious to the neighboring property owners or otherwise detrimental to the public welfare;

(8) The granting of the variance shall not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings; and

(9) Financial gain or loss to the applicant shall not be a determining factor in granting/denying a variance request.

(E) (1) Within 30 days following the public hearing, the Planning and Zoning Commission shall make a written decision, setting forth the reasons for the decision, which shall be accompanied by findings of fact(s) specifying the reason(s) for that decision.

(2) In granting variances, the Planning and Zoning Commission may impose reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. A variance may be issued for an indefinite period of time or for a specified period of time only. The nature of the variance and any conditions attached to it shall be entered on the conditional use permit. All the conditions are enforceable in the same manner as any other applicable requirement of this chapter.

(F) The decision of the Planning and Zoning Commission to approve to deny the application for a variance shall be final unless an appeal is taken to the Board of Trustees, as provided herein. (Ord. 206, passed 4-21-2005)

**§ 153.122 BENEFICIAL USE DETERMINATIONS.**

(A) *Generally.* In the event that a property owner in the Village of Milan believes that all beneficial use of his or her property has been denied, or taken by the application of this chapter, then he or she shall submit an application for a beneficial use determination under the provisions of

this section. The procedures provided herein shall be used prior to seeking relief from the court in order that any denial of beneficial use of property may be remedied through a non-judicial forum.

(B) *Purpose and intent.* The purpose and intent of this section is that every property owner in the Village of Milan should enjoy a beneficial use of his or her property. A beneficial use determination is a process by which the village evaluates the allegation that there is no beneficial use, and can provide relief from the regulation by granting additional development potential to permit a beneficial use of the property. It is also the intent of this section that relief not increase the potential for damaging the health, safety or welfare of future users of the property or neighbors that might reasonably be anticipated if the property owner was permitted to build.

(C) *Notice requirements.* The notice requirements and public hearing procedures for a beneficial use determination shall be the same as that provided for appeals. (Cite)

(D) *Additional information required.* The nature of this appeal requires detailed financial information on the property that is not required or desired in normal applications. The following data shall accompany all application for a beneficial use determination:

(1) Documentation of the date of purchase and the purchase price of the property;

(2) A description of the physical features present on the property, the property's total acreage, and the present use of the property, and the use of the property at the time of the adoption of this chapter;

(3) A description of the specific portions of the regulations which are alleged to result in an elimination of all beneficial use of the property together with all appraisals, studies, any other supporting evidence, and any actions taken by the village related to the property; and

(4) A description of the use which the property owner believes represents the minimum beneficial use of the property and all documentation, studies and other evidence supporting that position.

(E) *Deprivation standards.* In determining if a property owner has been deprived of beneficial use of his or her property the Board of Trustees shall take into account the following factors.

(1) The value of the property prior to adoption of this chapter which caused the property owner to apply for relief shall be compared to the value of the property with the regulations as applied. A mere diminution in value does not deprive the property owner of a beneficial use. The diminution must be so drastic that it effectively deprives the property owner of any significant use or enjoyment of the property.

(2) A use common to the village and/or the area of the subject site, although it may not involve further development of the land, is considered a beneficial use. Attention shall also be given to land uses that are considered to be the lowest intensity in the village or adjoining areas but which uses still provide for occupation and living by the property owner. These land uses shall be considered beneficial uses.

(3) Whether the property is being singled out for different treatment than similarly-situated properties under this chapter.

(4) A minimum beneficial use of the land should be one that does not have any governmental subsidy attached to the use of long-term safe occupation of the property. If a subsidy exists, then it should be reflected in considering minimum beneficial use on a valuation basis. The public costs of a subsidy should be considered as a payment to the property owner for the restriction on the property if there is an annual subsidy that enhances the economic return of the existing use to the property owner.

(5) The extent to which the regulations protect users or neighbors from threats to health or safety shall be fully accounted for. A use that seriously threatens the health of future residents or neighbors is not a beneficial use.

(6) Expectations, in general, shall not be considered. Only expectations backed by investments made prior to the adoption of the restrictions in question that are substantially above the cost of the land and normal planning investments shall be considered.

(7) In no case shall a use that is a nuisance per se, or a use that in that particular location constitutes a nuisance, be granted relief. These uses are not legal uses of the land and thus no taking of beneficial use of the land can occur.

(F) *Relief.* If the Board of Trustees finds that property owner has been denied all beneficial use of his or her property, then the following relief may be granted.

(1) The property owner shall be given the minimum increase in development intensity or other possible concessions from this chapter in order to permit a beneficial use of the land. The highest use, or even an average reasonable expectation, is not required or intended as the appropriate remedy.

(2) The following guidelines shall be used for determining the minimum beneficial use of property and, therefore, the amount of relief to be granted a property owner.

(a) The limited development potential, given the natural condition of the property, shall not be attributed to the regulations applied to the property. If the property is that it cannot safely accommodate development with normal grading and clearing practices, this fact shall be taken into account in identifying the best site for development that minimizes costs of development.

(b) The potential for damage to either residents or property shall be assessed in determining a beneficial use. Conditions shall be placed on sites where damage from building or

hazardous conditions is likely. The conditions may include location restrictions, size limitation, and construction practices and shall require a building to be built so it will not be damaged.

(G) *Board of Trustees.* The Board of Trustees shall make its decision by resolution. The decision of the Board of Trustees shall be final and conclusive. Based on the findings of the public hearing, the Board of Trustees may also direct that public hearings be held to amend this chapter. (Ord. 206, passed 4-21-2005)

### **AMENDMENTS**

#### **§ 153.135 AMENDMENTS.**

(A) Boundaries of the zoning districts established by this chapter, the classifications of property use therein or other provisions of this chapter may be amended whenever public necessity, convenience and general welfare require.

(B) Amendments to this chapter or the official zoning map may be initiated by:

(1) The verified application of 1 or more property owners proposed to be rezoned; or

(2) Motion of the Board of Trustees or the Planning and Zoning Commission.

(C) The Planning and Zoning Commission shall conduct at least 1 public hearing on the application to amend this chapter or the official zoning map.

(D) (1) The Planning and Zoning Commission shall announce its findings by formal resolution not later than the next regular meeting following the closing of the public hearing unless this time limit is extended by agreement of the parties having an interest in the proceedings. The resolution shall

recite the facts and reasons which, in the opinion of the Commission, make the approval or denial of the amendment necessary to carry out the general purpose of this chapter, and the relationship of the proposed zone change or amendment to applicable village plans and policies.

(2) Within 15 days from the date of their action, the Commission shall notify the applicant by forwarding a copy of the resolution to the applicant and to the Board of Trustees.

(E) The Board of Trustees shall conduct at least 1 public hearing on the application to amend this chapter or the official zoning map following receipt of the resolution from the Planning and Zoning Commission.

(1) The Board of Trustees may approve, modify or disapprove the recommendation of the Planning and Zoning Commission, provided that the Board of Trustees may, because of a desire for additional information, or due to the submission of significant new material or evidence, refer any modification of the application back to the Planning and Zoning Commission for further study and report.

(2) The Board of Trustees shall announce its findings and decision by ordinance. The ordinance shall recite the facts and reasons which, in the opinion of the Board of Trustees, make the approval or denial of the application necessary to carry out the general purposes of this chapter and the applicable village plans and policies.

(3) The action by the Board of Trustees on the application for a zone change or Zoning Chapter amendment shall be final and conclusive.

(4) If an application for a zone change is denied by the Board of Trustees, another request for the same rezoning on the same property shall not be accepted within a 1-year period. (Ord. 206, passed 4-21-2005)



**ENFORCEMENT AND VIOLATIONS**

**§ 153.150 ENFORCEMENT.**

(A) All departments, officials and public employees of the village who are vested with the duty or authority to issue permits or undertake enforcement actions pursuant to the terms of this chapter shall conform to the provisions of this chapter and shall issue no permits or undertake enforcement actions where the same would conflict with the provisions of this chapter.

(B) It shall be the duty of the Planning Administrator, the Code Enforcement Officer, the Village Attorney or their designated agents to enforce or cause to be enforced the provisions of this chapter.

(C) Complaints alleging a violation of this chapter shall be in writing and presented to the Code Enforcement Officer.

(1) The Code Enforcement Officer shall make a preliminary investigation of the complaint and inform the complainant in writing what actions have been or will be taken.

(2) The Code Enforcement Officer may request the assistance of the Planning Administrator and/or the Village Attorney during the investigation.

(3) The Code Enforcement Officer shall make written report to the Planning and Zoning Commission concerning all complaints he or she has received and all actions taken in response to those complaints.

(D) If the Code Enforcement Officer determines that any provision of this chapter is being violated, he or she will send a written notice (by certified mail, return receipt requested) to the property owner, indicating the nature of the violation and ordering the action necessary to correct it.

(1) The notice shall establish a reasonable time limit for abatement of the violation, which limit shall not be less than 2 days or more than 15 days. The first notice shall be in the form of a violation notice (red tag).

(2) The violation notice may also be personally served upon the property owner or the person in control of the property by the Code Enforcement Officer.

(3) The property owner may request an extension of time within which to comply. The request shall be in writing and the decision to grant or deny an extension shall be within the discretion of the Code Enforcement Officer. His or her decision will be in writing.

(4) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or general welfare, the Code Enforcement Officer may seek enforcement without prior written notice.

(E) An inspection will be conducted by the Code Enforcement Officer or his or her designee following the expiration of the time specified above. If compliance is still not met, the village will either proceed with the abatement of the nuisance or with the filing of a complaint in the local municipal court.

(F) Within the scope of his or her authority, the Code Enforcement Officer or his or her authorized inspector(s) may conduct an inspectorial search, with the voluntary consent of an occupant or custodian of the premises, who reasonably appears to the Code Enforcement Officer to be in control of the places to be inspected or otherwise authorized to give consent.

(1) Before requesting consent for an inspectorial search, the Code Enforcement Officer shall inform the person to whom the request is directed of the authority under and purposes for which the inspection is to be made and shall, upon demand, exhibit an identification card or document evidencing his or her authority to make the inspections.

(2) Inspections undertaken pursuant to this section shall be carried out with due regard for the convenience and privacy of the occupants, and during the daytime unless, because of the nature of the premises, the convenience of the occupants, the nature of the possible violation or other circumstances, there is a reasonable basis for carrying out the inspection at night.

(3) Unless advance notice would be likely to cause the suspected violation to be temporarily eliminated so as to frustrate enforcement, notice of the purpose and approximate time of an inspectorial search of an area not open to the general public shall be sent to the occupants or custodians of the premises not less than 7 days before the inspection is undertaken.

(G) Upon sufficient showing that required consent to an inspectorial search has been refused or is otherwise unobtainable within a reasonable period of time, the Code Enforcement Officer may make application for an inspection order/search warrant. The application shall be made to the district court having jurisdiction over the premises to be searched.

(1) The application shall set forth:

(a) The particular vehicle(s), premises or portion thereof sought to be inspected;

(b) That the owner or occupant of the premises or vehicle(s) has refused entry;

(c) The inspection of the premises or vehicle(s) is necessary to determine whether they comply with the requirements of this Zoning Chapter;

(d) Any other reason necessitating the inspection, including knowledge or belief that a particular condition; and

(e) The Code Enforcement Officer or his or her inspector is authorized by the village to make the inspection.

(2) The application shall be granted and the inspection order/search warrant issued upon a sufficient showing that inspection of the particular premises and/or vehicles(s) is in accordance with reasonable legislative or administrative standards, and that the circumstances of the particular inspection for which application is made are otherwise reasonable. The district court shall make and keep a record of the proceedings on the application, and enter thereon its finding in accordance with the requirements of this section.

(3) The Code Enforcement Officer or inspector executing the inspection order/search warrant shall, if the premises or vehicle in question are unoccupied at the time of execution, be authorized to use force as is reasonably necessary to affect entry and make the inspection.

(4) The Code Enforcement Officer or inspector conducting the search shall, if authorized by the district court on proper showing, be accompanied by 1 or more law enforcement officers authorized to serve search warrants.

(5) After execution of the order or after unsuccessful efforts to execute the order, as the case may be, the Code Enforcement Officer shall return the order to the district court with a sworn report of the circumstances of execution or failure thereof.

(H) If compliance is not met by the stated date, a second and final notice will be served in as any other legal process may be served pursuant to law. This second notice will be a pending prosecution notice and/or notice to abate.  
(Ord. 206, passed 4-21-2005)

### § 153.151 VIOLATIONS.

(A) *Action.* In the event a building or structure is erected, constructed, reconstructed, altered, repaired, converted, maintained or used in violation of this Zoning Chapter, the Code Enforcement Officer, in addition to other remedies, may institute an appropriate action or proceeding to prevent the

unlawful action, to restrain, correct, or abate the violation; to prevent the occupation of the building, structure or land; or to prevent an illegal act, conduct, business, or use in or about the premises. Violations of this chapter shall be prosecuted in the manner provided by law in order to ensure the health, safety and welfare of the citizens of the Village of Milan. The remedies proved for herein shall be cumulative and not exclusive.

(B) *Declaration of nuisance.* Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this chapter and/or any use of any land, building or premises conducted, operated or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and public nuisance and the Village Attorney shall, upon order of the Board of Trustees, immediately commence action or proceedings for the abatement and removal and enjoinder thereof in the manner provided by law and shall apply to the court as may have jurisdiction to grant relief as will abate and remove the building or structure and restrain and enjoin any person, firm or corporation from setting up, erecting, building, maintaining or using any building or structure or using any property contrary to the provisions of this chapter.

(C) *Abatement.* The notice to abate shall include the following:

- (1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances;
- (2) The location of the nuisance;
- (3) A description of what constitutes the nuisance; and
- (4) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the village will abate the nuisance and assess the cost thereof against the property owner and any applicable property.

(D) *Failure.* Upon the failure of the person upon whom notice to abate a nuisance was served, the Code Enforcement Officer or his or her designee shall proceed to abate the same and shall prepare a statement of costs incurred in the abatement action.

(E) *Costs of abatement.* Any and all costs incurred by the village in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which the nuisance existed, which lien shall be filed, proven and collected as provided by law. The lien shall be notice to all persons from the time of the recording, and shall bear interest at the legal rate thereafter until satisfied.

(F) *Governed by general rules of civil procedure.* Except as herein provided, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.

(1) A civil action to abate a public nuisance may be brought, by verified complaint in the name of the village without cost, by any public officer or private citizen, in the local municipal court against any person who shall create, perform or maintain a public nuisance.

(2) When judgment is against the defendant in an action to abate a public nuisance, he or she shall be adjudged to pay all court costs and a reasonable fee for the complaint's attorney.

(3) If the municipal judge places a person violating this chapter on probation, 1 of the conditions of probation shall be the abatement of the nuisance within the time period of the probation.

(G) *Prosecution.* Violation of the provisions of this chapter may be enforced by prosecution in municipal court pursuant to NMSA § 3-17-1, 1978. Prosecution of violations under this section may be commenced by the issuance of a citation charging the violation as provided herein.

(H) *Permit revocation.* Any discretionary permits issued by the village pursuant to the provisions of this chapter may be revoked if the permit recipient fails to develop or maintain the

property in accordance with the approved plans, the requirements of this chapter, or any additional conditions or requirements lawfully imposed upon the permit.

(1) Before a permit may be revoked, the permit recipient shall receive notice of a hearing before the Planning and Zoning Commission to consider revocation of a permit. The notice shall inform the permit recipient of the date, time and place of the hearing as well as the alleged grounds for revocation.

(2) A decision to revoke the permit shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the decision.

(3) No person may continue to make use of land or buildings in the manner authorized by the permit after the permit has been revoked in accordance with this section.

(Ord. 206, passed 4-21-2005)

**TABLE OF SPECIAL ORDINANCES**

Table

- I. FRANCHISES**
- II. ANNEXATIONS**
- III. STREET VACATION**
- IV. AGREEMENTS**

**Milan - Table of Special Ordinances**

**TABLE I: FRANCHISES**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
12	9-23-1957	Granting a franchise to Southern Union Gas Company to construct, operate and maintain a gas operation.
13	1-28-1958	Granting a franchise to the Continental Divide Electric Cooperative, Inc. to erect, equip, maintain and operate an electric operation.
19	5-27-1958	Granting a franchise to O.L. McMains, Jr. for the collection of garbage.
20	7-24-1958	Granting a permit to Tele-Grants, Inc. to construct, erect, operate and maintain a community television distribution system.
56	2-25-1969	Granting a franchise to Mountain States Telephone and Telegraph Company to construct, erect, operate and maintain a communications business.
58	3-20-1969	Granting a franchise to the Continental Divide Electric Cooperative, Inc. to erect, equip, maintain and operate an electric operation.
64	8-20-1971	Repealing Ordinance 20, repealing and terminating the permit or franchise for community television.
85	2-21-1978	Granting a franchise to Gas Company of New Mexico, a division of Southern Union Gas Company to construct, operate and maintain a gas operation.
157	2-15-1993	Granting a franchise to Jones Spacelink Fund 3, Ltd. to operate and maintain a community antenna cable television system.
163	3-16-1994	Granting a franchise to the Continental Divide Electric Cooperative, Inc. to erect, equip, maintain and operate an electric operation.

**Milan - Table of Special Ordinances**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
164	5-18-1994	Granting a franchise to U.S. West Communication company to construct, erect, operate and maintain a telecommunications business.
185	12-29-1999	Granting a franchise to Jones Communications of New Mexico, Inc. for the construction, operation and maintenance of a cable system.



**TABLE II: ANNEXATIONS**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
146	11-21-1990	Annexing Green Valley.
184	6-24-1999	Annexing Zuni Mountain Country Club area.
202	3-18-2004	Annexing LDS Church property.
246	6-27-2014	Annexing 80 acres in Section 4 T11N, R10W.
251	10-23-2014	Annexing NGL Crude Terminals, LLC property.



**TABLE III: STREET VACATION**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
160	9-1-1993	Abandoning and vacating Copperwood Drive; rezoned to M-1.



**TABLE IV: AGREEMENTS**

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
25	12-12-1958	Grants-Milan sewage contract.
36	6-1-1961	Paving District No.1, providing for the manner of giving notice of filing the assessment roll, an opportunity to file written objections and of a protest meeting.
38	7-13-1961	Paving District No. 1, providing for the payment of costs and expenses for improving certain streets and alleys.
41	8-31-1961	Paving District No. 1, supplementing Ordinance 38.
194	11-21-2002	Loan agreement by and between the Northwest New Mexico Solid Waste Disposal Authority and the New Mexico Finance Authority.



**PARALLEL REFERENCES**

References to New Mexico Statutes Annotated  
References to Ordinances





## REFERENCES TO NEW MEXICO STATUTES ANNOTATED

<i>NMSA</i>	<i>Code Section</i>
3-1-2K	31.02
3-17-1	153.151
3-17-6	70.01, 152.01
3-21-1-3-21-26	153.002
3-36-1	51.04
3-36-1 <i>et seq.</i>	92.03
3-36-1-3-36-7	110.009
3-38-1	110.046, 110.061
3-38-1-3-38-6	110.050, 110.065
3-38-3	110.060
3-38-13-3-38-24	110.001
3-38-23	110.014
3-38-24	110.014
Chapter 3, Article 38	110.050, 110.065
4-3A-10	30.40
5-10-1-5-10-13	112.01
5-10-3	112.16
5-10-3G	112.17
5-10-9	112.17
7-1-6.4	33.03, 33.22, 33.37
7-19D-9	33.05
10-15-1-10-15-4	153.081
14-2-1	34.042
28-2-1 <i>et seq.</i>	34.024
28-2-3 <i>et seq.</i>	34.021
29-1-14	131.13
29-7-1	131.13
29-19-1	131.13
30-9-1-30-9-19	134.03
30-31-1-30-31-41	133.05
31-12-9	133.99
3-38-13-3-38-24	110.001
59A-53-1-59A-53-17	32.15
60-1-11	133.03
60-2C	95.27, 95.29
60-2C-1	95.03
60-2C-1-60-2C-11	95.27
60-2C-7	95.29

**Milan - Parallel References**

<i>NMSA</i>	<i>Code Section</i>
60-2C-8.1	95.29
60-3A-3	110.076
60-14-1	153.021, 153.061
66	70.01

## REFERENCES TO ORDINANCES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
92	--	30.25
214	--	50.045
1	4-4-1957	30.01-30.10
5	5-2-1957	110.075-110.078
7A	5-7-1957	32.30
9	6-20-1957	110.030-110.035
12	9-23-1957	TSO I
13	1-28-1958	TSO I
18	5-27-1958	110.077
19	5-27-1958	TSO I
20	7-24-1958	TSO I
25	12-12-1958	TSO IV
36	6-1-1961	TSO IV
38	7-13-1961	TSO IV
41	8-31-1961	TSO IV
52	2-8-1967	134.20, 134.21
56	2-25-1969	TSO I
58	3-20-1969	TSO I
64	8-20-1971	TSO I
70	12-18-1973	30.11, 30.12
79	4-21-1977	110.077
85	2-21-1978	TSO I
89	4-30-1979	33.01, 33.03-33.05
90	7-1-1979	33.01, 33.03-33.05
99	6-17-1980	130.01-130.03, 131.01-131.22, 132.01-132.11, 133.01-133.05, 133.99, 134.01-134.09, 135.01-135.06
101-A	8-19-1980	30.40, 30.41
102	10-21-1980	50.001, 50.015, 50.016, 50.030-50.032, 50.045, 50.060, 50.061, 50.075, 50.076
108	7-1-1982	33.01, 33.03-33.05
110	7-6-1982	152.01
111	9-7-1982	33.05
112	1-18-1983	50.045
115	6-21-1983	10.99
167	7-20-1983	50.045

## Milan - Parallel References

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
121	3-4-1985	33.01-33.05
125	6-19-1985	150.01-150.13
131	9-3-1986	92.01-92.05
132	4-15-1987	151.01-151.04, 151.15-151.22, 151.35-151.38, 151.50-151.54
135	4-20-1988	133.06, 133.99
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